PROSPECTUS

- It is a document based on which an intending investor decides whether to subscribe to shares or debentures of a company
- Law therefore requires sufficient disclosure of various matters through prospectus
- Prospectus signifies an "Invitation to Offer" and not "Offer" –Acceptance does not bring a contract into existence
- There could be probably two types of fraudulent events in a prospectus issue
    - Fraudulent/False Information
    - Omission of a material fact
- Ignorant public to know about all the present and future prospects which would help them take an effective decision

Issue of Securities by a Public Company

Public Offer- to public through a prospectus (IPO and FPO)	Private Placement
Rights Issue	Bonus Issue

Issue of Securities by a Private Company

Private Placement	Rights Issue
Bonus Issue	

SEBI power to regulate the issue and transfer of securities

Applicability	Listed Companies , OR Companies which intend to get themselves listed
Issues	Issue and Transfer of Securities Non Payment of Dividend

When the issue relates to either of the two issues and also to the applicable companies, the same shall be administered by SEBI and Central Government together. In other cases, the issue shall be administered by the Central Government.

Document containing the offer of Sale of Securities to be deemed as a prospectus

- Any Document by which the company offers for sale its securities shall be deemed to be a prospectus
- For the deemed prospectus, all provisions as to contents and liability in case of misstatements in prospectus shall also apply

- Allotment or Agreement to allot deem as a offer for sale if shown:-
    - Offer of the securities was made within 6 months after allotment or agreement to allot
    - Date when offer was made, the whole consideration receivable by the company has not been received by it
- Matters to be stated in the prospectus also is applicable here
    - Net amount of consideration receivable
    - Time and place at which contract for said securities have been made or been allotted has been made
- Person Making Offer is Company or firm- if Company-atleast 2 directors and and for Partnership firm- more than half of partners have signed it

<u>Matters to be stated in the Prospectus</u>

- To be dated and signed
- Names and Address of Registered office
- Names of Persons (CS, CFO, Auditors, Bankers, trustees, underwriters)\
- Date of opening and closing of issue
- Declaration by Board of Directors of Allotment letter issue or refund within 15 days of closure of issue
- Statement of Separate Bank Account where issue proceeds will be kept
- Details of underwriters and the amount underwritten
- Consent of Directors, Auditors and Bankers , experts opinion
- Capital Structure of Company
- Objects of the public offer
- Management's view of risk factors
- Minimum Subscription
- Details of Directors- Including their appointment and their remuneration
- Disclosure of source of Promoter contribution
- Profit and Loss Statement for the last 5 years, if available
- Auditors Reports for the last 5 years, if available
- Reports of business for which the proceeds of securities are to be utilised

A declaration to be given that nothing in the Prospectus is contrary to provisions of

- Companies Act 2013
- Securities Contract (Regulation) Act 1956
- Securities and Exchange Board of India Act 1992

Above Provisions not apply

- Issue to the existing members or debenture holders of a company
- Issue of shares, in all respects, uniform with the shares or debentures previously issued

No Prospectus shall be issued unless on or before the date of publication

- A copy has been delivered to the Registrar for Registration
- Which has been signed by all directors/proposed directors/ duly authorised attorney

Requirements as to an expert statement to be included in the prospectus

- Person not engaged or interested in the promotion
- Given his written consent to include statement and has not withdrawn it before registration of the same
- Statement of the same is included in the prospectus

Prospectus to state that a copy has been delivered to ROC for registration and specify any documents required to be attached with it for Registration

ROC not to register the prospectus unless

- All requirements of act complied with, and
- Prospectus accompanied by written consent of all the persons

Prospectus not valid if issued more than 90 days after it is delivered to the Registrar for Registration.

<u>VARIATION IN TERMS OF CONTRACT OR OBJECTS IN PROSPECTUS</u>

- Variation can be effected only with special resolution in shareholders meeting after sending notice to them
- Notice of the same to be given in newspaper (One in English and one in vernacular language of place of Registered Office) indicating justification of variation
- Dissenting Shareholders are to be given exit option
- Companies(Prospectus and Allotment of Securities) Rules 2014 states – Co has raised money from the Public and has unutilised amount- not vary terms unless special resolution passed and also notice published in paper as advertisement. Notice also to be posted on Website of the Company

<u>OFFER FOR SALE OF SHARES BY MEMBERS OF THE COMPANY</u>

- Members will collectively authorise the company to sell shares on their behalf
- They will propose the offer after consultation with the Board of Directors
- Document by which offer for sale to public is made is “Deemed Prospectus” –rules as to contents and liability for misstatements will apply
- Members collectively authorise company to take all actions for the sale of shares and they agree to reimburse the company all expenses incurred in this matter

<u>PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM</u>

- Every company making offer and prescribed companies shall issue securities only in Dematerialised form complying with Provisions of Depositories Act 1996
- Other Companies may convert the securities into Dematerialised form in accordance with provisions of Depositories Act 1996

ADVERTISEMENT OF PROSPECTUS

- It shall specify therein
    - Contents of Memorandum- objects and liability namely and share capital
    - Names of Signatories to the Memorandum and number of shares subscribed
    - Capital Structure

SHELF PROSPECTUS

- Means a prospectus wherein the securities included therein are issued for subscription in one or more issued over a certain period without issue of a further prospectus
- Legal Compliances for the issue of Shelf Prospectus
    - SEBI may specify Companies which can issue Shelf Prospectus- this is to be filed with the Registrar of Companies
    - It can be filed
        - At the first offer of securities –period of validity maximum 1 year to be indicated
        - Second or subsequent issue-this is to be done within the validity period, if done so, then no further issue of prospectus is needed
    - Filing of information memorandum
        - This is to be filed when there is issue of Shelf Prospectus
        - To contain all the material facts that occurred between first or previous offer of securities and succeeding offer relating to
            - New Charges Created and
            - Changes in the Financial Position
    - Company received advance payments-may intimate the changes and if the applicants desire to withdraw application-company or other person shall refund all the monies received as subscription within 15 days
    - Shelf Prospectus together with Information Memorandum shall be deemed to be a prospectus.

Red Herring Prospectus

- Not Include full details regarding
    - Quantum of the Securities and
    - Price of the Securities
- Company desirous of making a public issue may file a Red-Herring Prospectus
- It shall be filed with ROC -3 days prior to the opening of the issue
- Obligations as same as prospectus and variation between prospectus and RHP Shall be highlighted in the Prospectus
- Closing of offer- Prospectus stating the Total Capital raised, and Closing price of securities and any other details as not included in RHP shall be filed with ROC and SEBI

Abridged Prospectus

- Memorandum containing salient features of prospectus as may be prescribed
- No Such Prospectus shall be issued when the
  - Bona fide underwriting agreement is made
  - Securities not offered to the public
- Copy of the Prospectus-to be furnished on request by any person before the closing of subscription list
- Company makes default- penalty of Rs. 50,000

Liability for Mis-Statements in Prospectus

- A Statement which is misleading or
- An omission of statement which is of material importance
  - Every Person authorising issue of Such Prospectus liable for Fraud
  - Punishment – Imprisonment Min.6 months, maximum 10 years, (if fraud affects public interest-min. imprisonment- 3 years) penalty- min amount involved in fraud and maximum-3 times of such amount
- No penalty- if found that
  - Such Statement was immaterial OR
  - Person had reasonable grounds to believe same was true
- Person who has subscribed based on the misstatement – acting on such statement in prospectus – sustained loss or damage , then
  - Company and every person who is a director at time of issue or agreed to become a director, promoter, authorised to issue prospectus , expert shall be liable to compensate every person who has sustained loss without any limit
- Exempt from liability
  - Consent was withdrawn prior to prospectus issue
  - Prospectus was issued without his knowledge or consent and he had given reasonable public notice of the same fact

Punishment for Fraudulently inducing persons to invest money

- Fraudulently inducing persons to invest money through
  - False, deceptive or misleading information
- This may relate to
  - Agreement for acquiring , disposing or subscribing or underwriting securities
  - Agreement-Purpose is to secure a profit by reference to fluctuation in prices
  - Obtain credit facilities from Bank or Financial institution

Punishment for Personation for Acquisition, etc. of securities

- Person making
  - Application in a fictitious name for acquiring or subscribing securities or
  - Makes or abets making multiple applications in different names or in different combinations of same name

    - Induces company directly or indirectly to register or transfer of security to him or another person in a fictitious name
        - Shall be liable for action under Section 447.
- This Provision is to be stated in every prospectus and application
- Convicted person- Court may order seizure and disposal of security and disgorgement of gain and amount received on such disposal or disgorgement to be credited to IEPF (Investor Education and Protection Fund)

Allotment of Securities by a company

- No allotment of shares to be made unless minimum subscription as stated in prospectus is received
- Amount payable on application- not less than 5% of the Face Value of the Shares or amount prescribed by SEBI
- Minimum amount as stated is not received within 30 days or such date as prescribed by SEBI, then the same shall be returned within prescribed period and prescribed Manner
- As per Companies (Prospectus and Allotment of Securities) Rules 2014 – repayment period has been fixed as 15 days from the closure of issue. If not paid within such period-Directors and officers to pay interest @ 15% per annum.
- Allotment of Securities made shall be followed by filing return of Allotment with the Registrar
- Penal Provision-One Thousand Rupees Per day or Rs 1,00,000 whichever is less

Securities to be dealt in Stock Exchanges

- Company making public issue shall make application for listing of securities in a Recognised Stock Exchange
- Prospectus to state the name of Stock Exchange
- Moneys received on application to be kept in separate Bank Account- to be used for following purposes only:-
    - Adjust against allotment
    - Repayment of Monies within a specified time period
- Condition to waive compliance with any provisions here will be void
- Punishment
    - To the Company- Rs. 5 Lakhs –Rs. 50 Lakhs
    - Officer of Company- Imprisonment upto 1 year and Fine- Rs. 50,000- Rs. 3 Lakhs
- Company can pay commission in compliance with the Companies (Prospectus and Allotment of Securities) Rules 2014- Which state
    - Payment to be authorised by Articles of Association
    - Commission to be paid out of issue proceeds or out of profits
    - Rate of commission-
        - In case of share issue- not exceed 5% of issue price of shares or rate authorised by Articles whichever is less and

    - in case of debenture issue - not exceed – 2.5% of the issue price or rate authorised by Articles whichever is less
- Prospectus to state the
  - Name of Underwriters and rate and commission payable and no of shares to be underwritten by the underwriter
- Commission to be paid only on securities offered to the public
- Copy of the Contract to be delivered to the Registrar

Global Depository Receipts

- Company may issue GDR to transact business within depository mode in a foreign country
  - Company to pass a special resolution in General Meeting
  - Company to Comply with FEMA guidelines
  - Depository receipts to be issued by an overseas depository bank and the underlying shares to be kept in custody of a domestic custodian bank
  - Company to comply with RBI directives issued in this regard
  - Company to appoint a Practicing CA/CS/Cost Accountant or Merchant Banker to oversee all compliances relating to DR and compliance report obtained from them to be placed at General Meeting
  - Depository Receipts to be issued- by way of Public Offering or by way of Private Placement
  - Proceeds of Depository Receipt issue to be kept in designated Indian Banks or Foreign Banks having operations in India
  - Holder of DR to have voting rights on conversion into shares only

Private Placement

- Offer of Securities to select Group of Persons through issue of Private Placement Offer Letter
- Maximum offer- to 50 persons in a financial year or higher as prescribed
  - Companies (Prospectus and Allotment of Securities) Rules 2014 specifies the limit as 200
  - This no. does not include Qualified Institutional Buyers and Employees of the Company given option under Employee Stock Option Plan (ESOP)
- Offer made to more than the no. of persons specified-deemed as public issue
- No fresh issue or offer to be made unless previous issue- allotments have been completed or offer has been withdrawn or abandoned by the company
- Offer not in compliance with the provisions deemed as public offer
- Moneys payable to be paid by mode other than cash
- Allotment to be done within 60 days of receipt of money, if Company not able to allot within 60 days then refund back the whole amount within 15 days from the end of 60 days and failure to repay within that period, company shall pay interest @ 12% per annum from the 60th day
- Moneys received to be kept in separate bank account to be used for

- Adjustment against allotment and
- Repayment of money when the company is not able to allot securities

- Offer to be made only to such persons whose names are recorded by the company prior to invitation to subscribe
- Company not to publish any advertisement for this form of issue
- Company to file Return of allotment with the registrar post allotment of securities
- Penalty –to Company, Promoters and Directors
  - Amount involved in invitation or Rs. 2 Crore whichever is higher and
  - Company to refund the entire proceeds within 30 days of imposition of penalty
- Companies (Prospectus and Allotment of Securities) Rules 2014 prescribes certain limitations
  - Proposed offer approved by shareholders at General Meeting by Passing Special Resolution- Notice to be send which should have the basis or justification of the offer price
  - Offer to Maximum 200 persons in a financial year – QIB and ESOP plans issues to be excluded
  - Value of offer or invitation- not less than Rs. 20,000 of the Face value of Securities
  - Company to maintain records of Bank Account from which the payment has been received

<u>Acceptance of Deposits by Companies</u>

- Deposit includes receipt of money by any form – deposit or loan by a company but not include categories of amount prescribed
- Companies (Acceptance of Deposits) Rules 2014 specifies the following categories of amount not to be considered as deposits
  - Amount from Government-Central or State or source-repayment guaranteed by Central/State Government , or amount from local authority or amount from statutory authority
  - Amount from Foreign Government, Foreign International Banks , multilateral financial institutions subject to FEMA
  - Loan or Credit Facility from Banking Company
  - Financial Assistance from Public Financial Institutions
  - Commercial Paper Issue Proceeds- in accordance with RBI norms
  - Received by one company from another company
  - Share Application money pending allotment or amount retained for adjustment against allotment
  - Securities for which application money or advance money was received and if Company not able to allot within 60 days then refund back the whole amount within 15 days from the end of 60 days and if not done so the same shall be treated as Deposit under these rules
  - Receipt from a Director of a Company
  - Bonds/Debentures issue proceeds

- Receipt from Employee of a company
- Non -interest bearing amount held in trust or received
- Advance Received for provision of services to be rendered or goods supplied
- Promoters contribution as unsecured loan in pursuance of a condition stipulated by a lender
- Amount accepted by a Nidhi Company

- Prohibition of Acceptance of Deposits
  - No Company- to invite, accept or renew deposits under the act from the Public other than in the manner prescribed under the act. This Provision is not applicable to
    - Banking Company
    - Non -Banking Finance Company
    - Housing Finance Company
    - Companies Notified by Central Government after RBI consultation
- Company to accept deposits- conditions
  - Passing of Resolution in General Meeting
  - And Rules in consultation with the RBI
  - Company to issue circular to members- information regarding the financial position of company, credit rating, amount pending on earlier deposits, if any and file a copy of the same with the Registrar within 30 days of issue of circular
  - Deposit –atleast 15% of the amount of deposits maturing during the financial year and next financial year-to be kept in separate bank account to be known as Deposit Repayment Reserve Account
  - Deposit Repayment Reserve Account- to be used only for the repayment of Deposits
  - Provide Deposit insurance
  - Certify- no default committed by the company in repayment of deposit or interest on the deposits earlier accepted
  - Provide-Security and also create charge on the same
  - With respect to deposits accepted prior to effective date of Companies Act 2013-Company to file with ROC the statement of all deposits accepted by the company and unpaid sums on the same and repay within one year of commencement of act or maturity date whichever is earlier
- Deposit taken- to be repaid with interest as per terms. If default done the deposit holder can approach the tribunal for payment of interest or sum due or loss sustained as a result of the same. The Tribunal may also grant extension to company for payment if it deems fit
- Default in Repayment
  - Company- Rs. 1 Crore- Rs. 10 Crore
  - Officer of Co. in default- Rs. 25 Lakhs-Rs. 2Crore + Imprisonment maximum -7 years.
- Contravention
  - Acceptance of Deposit- Deposit amount involved

    - Invitation of Deposit – Fine- Rs. 50,00, maximum Rs. 10 Lakhs., officer – Imprisonment upto 5 years
- Public Company having
    - Net-worth of atleast Rs. 100 Crore or
    - Turnover-Atleast Rs. 500 Crore
        - Accept deposits from other than members subject to compliance with prescribed rules
    - Company to obtain Credit Rating from a Recognised Credit Rating Agency and to ensure that the same is obtained every year during the tenure of the deposits
- Company accepting deposits from members to create a charge on the assets of the company, for amount not less than the amount of deposits, within 30 days of acceptance of such deposits

Application of Premiums Received on the issue of Shares

- Premium received on the issue of shares to be transferred to Securities Premium Account
- Security premium can be utilised for the following purposes
    - Issue of Bonus Shares
    - Writing off Prelimnary Expenses
    - Write off of expenses- Commission paid/ discount allowed on issue of shares or debentures
    - Premium on redemption of debentures

Restrictions on Purchase by Company or giving of loans by it for the purchase of its own shares (Section 67)

- A Company limited by shares and guarantee company having share capital – not to buy back its shares unless capital reduction is effected under the act.
- No Public company shall also give financial assistance (loan , guarantee) for the purchase or the subscription of the shares of the company/ its holding company
    - Exceptions are:-
        - Lending of money by a banking company in the ordinary course
        - Provision made in accordance with a scheme approved through special resolution in General meeting
        - Loans to Employees (other than directors or KMPs) for an amount not exceeding their salary and wages for the six months for the purchase of the shares in the company

Buy Back of Securities (Section 68)

Conditions for Buy Back of Securities

- The Buy-Back Should be out of :-
    - Free Reserves

- Securities Premium Account
- Proceeds of issue of any shares or Specified Securities (not out of proceeds of earlier issue of same kind of securities)

- Other Conditions
  - To be authorised by the Articles of Association
  - Special Resolution is passed in the General meeting. Exceptions
    - Buy Back is 10% or less of (Total Paid up Capital and Free Reserves) and
    - Buy Back is approved by a Board Resolution
  - Buy Back is 25% or less of (Total Paid up Capital and Free Reserves). However buy back should not exceed 25% of Total Equity Share capital in a financial year
  - Debt –Equity Ratio post buy-back to be 2 or less after buy back(Debt-secured and unsecured). Central Govt. may prescribe higher ratio for classes of companies
  - Shares for buy back are fully paid up
  - Listed securities to comply with SEBI norms
  - Gap between two buy-back offers atleast-one year
  - Buy Back to be completed within 12 months from passing the special resolution/ board meeting
- Notice of General Meeting for passing special resolution to state the following
  - Full and Complete disclosure of all material facts
  - Necessity of Buy-Back
  - Class of shares intended to be purchased under buy back
  - Amount to be invested under buy back
  - Time Limit for completion of buy back
- Buyback to be made from
  - Existing holders on a proportionate basis OR
  - From the open market OR
  - Purchasing Securities issued to the employees of the company
- Before making the Buyback offer and after passing the special resolution/ board resolution the company shall file
  - A declaration of solvency to Registrar of Companies and SEBI
  - Affidavit by the Board has made full enquiry into the affairs of company and in their opinion company will be able to meet its liabilities
- Company to physically destroy the securities bought back within 7 days of the last date of completion of buyback
- Company not to come up with issue of similar type of securities -6 months from the date of completion of buyback –Exceptions- Bonus Issue, conversion of warrants, ESOP
- Company to maintain Register of Buyback –details of securities bought back, price, date of cancellation
- Buy Back return to be filed with ROC and SEBI , within 30 days of completion of Buy Back

- Penalty for default
    - Company –Rs.1 lakh to Rs. 3 lakh
    - Officer - Rs.1 lakh to Rs. 3 lakh (Imprisonment- extend to 3 years)
- Company Purchases its shares out of Free Reserves or Securities Premium Account then it shall transfer Nominal Value of the shares so purchased to the Capital Redemption Reserve Account (CRR). CRR account to be used only for the issue of bonus shares
- Prohibition of Buyback
    - Company purchasing its own securities
        - Through any subsidiary company including its own subsidiaries
        - Through investment company or group of investment companies
    - Default made on the repayment of deposits or interest payment thereon or redemption of debentures or preference shares (Default remedied and 3 years passed-this provision shall not apply) \
    - Not to make buyback unless compliance is made with provisions of companies act relating to Payment of Dividends and Annual Report and Financial Statements

Membership

- Member means
    - Subscriber to the memorandum
    - Agrees in writing to be a member
    - Holding shares in the company
- Becoming a member-apart from the above a person can also become member through transfer of shares
- Minor Becoming a member – decided in case –Nandita Jain v. Bennet Coleman & Co. Ltd. Minor can become member provided the following 4 conditions are satisfied ‘
    - Company is a company limited by shares
    - Shares are fully paid up
    - Application for the transfer is made on behalf of minor by legal guardian
    - Transfer is for the benefit of the minor

Company becoming a member of another company

Subsidiary company cannot hold shares in the holding company.

Exceptions are as follows:-

- Subsidiary Company held shares before it became subsidiary
- Shares held as a legal representative of a deceased member
- Shares held as a trustee

Termination of Membership

When the person’s name is removed from the Register of members. This can happen due to:-

- Transfer of Shares
- Shares forfeited, surrendered or sold to enforce a lien
- Redemption of Redeemable Preference Shares
- Death of Member and transfer to legal representative
- Contract to take shares is rescinded or repudiated
- Member becomes insolvent and the official assignee disclaims the shares or transfers them
- Shares held by a company in course of liquidation and liquidator disclaims shares or transfers them

Register of Members is the prima facie evidence that a person is a member of a company or not. On death of a person, his name will continue in the Register unless there is notice given to the company

Member and Shareholder

- Registered Member may not be a shareholder, i.e., company limited by guarantee and not having share capital does not have shareholders but members
- Share Warrant holder is not a member as name does not appear in Register of Members, but he is a shareholder
- Legal Representative of a deceased member is a shareholder not a member till he applies for registration and name entered in the Register of Members

Rights of a Member

- Certificate of Shares be issued to him
- Name in the Register of members
- Transfer shares subject to provisions in Articles
- Attending Meetings of Shareholders by receiving notices
- Associate in the declaration of dividends
- Inspection of Registers
- Obtain Copies of Memorandum and Articles on request and payment of prescribed fees
- Right of Pre-Emption
- Notice for meetings
- Copy of the Annual Accounts of the Company
- Participation in the Annual General Meeting and passing Resolutions

Liabilities and Duties of Members

- Take shares when allotted
- Pay for shares when allotment is made
- Abide by the doing of the majority of members unless they act oppressively, vindictively
- Contribute to the assets of the company in case of winding up
  (when shares are partly paid up)

Contracts

Contract to take shares of a company is governed by similar provisions as a contract.

- Prospectus-deemed as invitation to offer
- Applicant sends application –also deemed as offer-company may accept it
- Applicant can revoke his application till the notice of allotment is put in course of transmission to him.

Forms of Contract

- Company can enter into contracts like an individual person. Contract in writing may be done by any person acting under the authority of the company
- Company can also enter into a oral contract when writing is not legally necessary –but it is to be made by an authorised person
- Company can also accept endorse or issue a bill of exchange provided it is done by a person acting on the authority
- A Deed signed by the authorised person on behalf of the company will bind the company