

prospectus

In general parlance prospectus refers to an information booklet or offer document on the basis of which an investor invests in the securities of an issuer company. It has been defined under section 2(70) so as to mean any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

Red herring Prospectus under Explanation to section 32 has been referred to mean a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

Shelf Prospectus under Explanation to section 31 has been referred to mean a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Matters to be stated in the prospectus

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(a) state the following information, namely:— (i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed; (ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time; (iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner

(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed; (vi) the authority for the issue and the details of the resolution passed therefor; (vii) procedure and time schedule for allotment and issue of securities; (viii) capital structure of the company in the prescribed manner; (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed; (x) main objects and present business of the company and its location, schedule of implementation of the project etc.

SHELF PROSPECTUS

Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period Under the Act any class or classes of companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required

RED HERRING PROSPECTUS

Red herring Prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In simple terms a red herring prospectus contains most of the information pertaining to the company's operations and prospects, but does not include key details of the issue such as its price and the number of shares offered.

According to section 32 a company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. Such company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

ABRIDGED PROSPECTUS

According to section 2(1) of the Act "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. Section 33 of the Act provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus. A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him

Offer of sale of shares by certain members of a company

Section 28 of the Act permits certain members of a company, in consultation with Board of directors, to offer, in accordance with the provisions of any law for the time being in force, the whole or a part of their holdings of shares to the public. The document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company. All laws and rules made hereunder as to the contents of the prospectus and as to liability in respect of misstatements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company

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The section lays that the members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose share were offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

Public offer of securities to be in dematerialised form

Notwithstanding anything contained in any other provisions of this Act,— (a) every company making public offer; and (b) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Advertisement of prospectus

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure

Criminal liability for misstatements in prospectus

34. Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.

Civil liability for misstatements in prospectus

35. Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

(a) is a director of the company at the time of the issue of the prospectus; (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time

(c) is a promoter of the company;

(d) has authorised the issue of the prospectus; and shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage

Allotment of securities by company

No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument

If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed

The amount payable on application on every security shall not be less than five per cent.