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**PROSPECTUS: ISSUES, CONTENTS AND KINDS UNDER  
COMPANIES ACT, 2013**- Sushree Joyesha<sup>1</sup>**INTRODUCTION**

A prospectus, for a general understanding, is a disclosure document that invites investors to subscribe to a company's securities. The document covers the company's overall operations as well as the goal of the securities which are on sale. The Prospectus is required by the Security Exchange Commission (SEC) and a mandate to file it with the SEC. It provides information regarding investment risk, the business's financial standing, and other pertinent data, such as an in-depth description of the company's background, management expertise, and management's engagement in the business. Risks are often addressed early in the prospectus and further explained later. Such material facts protect investors' rights as the announcement of the Prospectus makes an invite to the public to make any subscriptions to the shares and the debentures of the company.

Some companies do not sell directly to the public but the entire share capital is allotted to an intermediary, which subsequently through advertisement sells the shares to the public. A prospectus is any document that is used to make an offer to sell to the public. A prospectus should be made available to the public as only public limited firms are permitted to issue the prospectuses. Thus, a prospectus is treated as an invitation which is open to the whole public. Private Limited Companies are forbidden from releasing prospectuses or inviting public subscriptions for their shares.

A prospectus, as per section 2(70)<sup>2</sup> of The Companies Act 2013, it is a document described or issued in the form of a notice, a circular, an announcement or any other document giving

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<sup>2</sup> The Companies Act, 2013, § Section 70, No.18, Acts of Parliament, 2013 (India).

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invitation to the public for the subscription or purchase of any securities, shares or debentures of a body corporate, company or a corporation.

Thus, a prospectus is more than just an announcement or advertisement; it can also be a circular or a notice. A prospectus is a document that meets two of the following criteria:

1. Offers to subscribe or purchase shares, debentures, or other business securities.
2. The invitation is open to the general public.

### **FUNDAMENTAL DETAILS ABOUT A PROSPECTUS**

- An appeal must be submitted to the open public.
- The appeal must be filed on behalf of the company or its successor.
- The application must be either pledged or purchased.
- The request made should be for sale of shares or debentures, and the invitation made is delivered by or on behalf of the company.
- Shares, debentures, or comparable securities has to be included in the invitation.

### **PROCESS OF SIGNING AND REGISTRATION OF PROSPECTUS**

Signing and Registration of a Prospectus is an essential step as it involves authentication for a valid prospectus. The Prospectus must be signed by everyone whose name appears as the director or proposed director of the company. It is an obligation to submit a copy of the prospectus to the competent regulatory authority for registration before it may be made public. The regulatory body will review the prospectus and, if necessary, provide feedback or make adjustments.<sup>3</sup> Once the prospectus has been registered, which is made available to the general public by subscription or purchase. A prospectus supplement, on the other hand, does not require separate registration but must be lodged with the regulatory authority and distributed to potential investors once the main prospectus is filed. The supplement includes updated or particular information about a security solution. The registration period for a prospectus varies depending on the regulatory requirements and the specific securities offering. A registration statement's effective date must be at least 20 days after filing.<sup>4</sup> The registration process durations might vary depending on the completeness and quality of the papers filed,

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<sup>3</sup>Companies Act 1965, § Section 42, No.125, Acts of Parliament, 1965(India).

<sup>4</sup>James Chen & Thomas J. Catalano, *Preliminary Prospectus: What It Means, How It Works*, INVESTOPEDIA, <https://www.investopedia.com/terms/p/preliminaryprospectus.asp> (last visited Feb 25, 2024).

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the complexity or novelty of the issues highlighted in the filing, and the issuer's reply to regulatory comments.

### **PENALTY APPLICATION ON NON-COMPLIANCE OF SECTION-26**

When a prospectus is issued by violating this clause, the company may be charged with a fine of up to three lakh rupees. If any person is involved in publishing such a prospectus will be charged with a fine of up to 50,000 rupees and up to three years of imprisonment.

### **ROLE OF THE SECURITIES AND EXCHANGE COMMISSION (SEC) IN REGULATING PROSPECTUS**

The Securities and Exchange Commission (SEC) has comprehensive control over all areas of the securities business, particularly the ability to register, regulate, and supervise the securities markets. In the case of prospectuses, <sup>5</sup>the SEC guarantees that the information presented is correct, thorough, and not misleading, protecting investors. The SEC reviews and approves the prospectus as part of the securities offering registration process, such as initial public offerings (IPOs). This oversight assists in maintaining fair and transparent financial markets by providing investors with the information they need to make well-informed investment choices.

### **PURPOSE OF A PROSPECTUS IN AN IPO**

A prospectus in the context of an IPO is designed to give investors interested in significant details about the company and the securities being offered. The prospectus comprises information about the company's risk factors, performance prognosis, management structure, financials, and the IPO stock sale, including the share price, the amount raised, and how the funds will be utilised<sup>6</sup>. It also includes information on the underwriters who will be organising the stock sale. The prospectus is of the utmost importance because it provides investors with thorough information about the offering, allowing them to make reasoned decisions. It usually comprises a description of the company's past events, growth prospects, and current events and a section addressing potential dangers.

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<sup>5</sup>SEC.gov | The Laws That Govern the Securities Industry, <https://www.sec.gov/about/about-securities-laws> (last visited Feb 25, 2024).

<sup>6</sup>Keith Noonan, *What Is a Prospectus?*, THE MOTLEY FOOL, <https://www.fool.com/terms/p/prospectus/> (last visited Feb 25, 2024).

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## **PROCESS FOR A COMPANY TO AMEND PROSPECTUS AFTER FILING**

If a company wishes to alter its prospectus once it has been filed with the Securities and Exchange Commission (SEC), then it must file an amendment form with the SEC. The form is named SEC Form 424B3, which firms utilise to update their prospectuses. This form is necessary when a corporation wants to revise, alter, or improve the data to its registered prospectus without modifying the prospectus from its original form. Companies must submit prospectus form 424B3 in compliance with Rule 424(b)(3)<sup>7</sup> of the Securities Act. When "substantive" events or facts surface that were not disclosed in the prospectus previously submitted to the SEC, the form must be redone.

Rule 424 of Regulation C of the Securities Act of 1933, Title 17, Part 230<sup>8</sup>, specifies eight different types of prospectus modification forms and the companies must also file Form D, notifications and revisions with the SEC online, via the Internet.

## **KINDS OF PROSPECTUS**

4 kinds of prospectus as discussed under the Company Law:

- Deemed Prospectus
- Red Hearing Prospectus
- Abridged Prospectus
- Shelf Prospectus

**Deemed Prospectus**- Section 25(1)<sup>9</sup> of the Companies Act, 2013 establishes a deemed prospectus. When a public business allows or agrees to issue shares for public sale, any document which is used to make an offer is called a prospectus formed by the company. The deemed prospectus is subject to all enactments and legal norms governing the contents of prospectuses, as well as the liability for the misstatements, errors from prospectuses or other prospectus-related matters.

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<sup>7</sup>James Chen & Andy Smith, *SEC Form 424B3: Definition, When It's Used, and How It's Filed*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/sec-form-424b3.asp> (last visited Feb 25, 2024).

<sup>8</sup>*Ibid.*

<sup>9</sup>The Companies Act, 2013, § Section 25, No.18, Acts of Parliament, 2013 (India).

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**Red Herring Prospectus** - Under Section 32<sup>10</sup> of the Companies Act, 2013, that elucidates "red herring prospectus" by means of a prospectus which doesn't comprise complete details of the significant or price of the securities included therein. Red herring prospectus provides information on the company's operations and prospects but lacks essential elements like the price and quantity of shares sold. Before the issuance of the Prospectus a corporation that intends to make a security, offering can also issue a red herring Prospectus. The companies have to submit the red herring Prospectus to the ROC at least three days prior to the offer is opened. When an offer is completed, the companies file the Prospectus with the ROC and the Securities and Exchange Board (SEC). It includes information about the total capital raised through share capital or debt, the offer's closing price, and other facts not contained in the red herring Prospectus.

**Abridged Prospectus** - It refers to a memorandum covering the critical components of a prospectus. It provides concise information to help investors make quick investing decisions. In this scenario, the Company must include it with each application form to purchase securities. Such a prospectus contains all of the Prospectus's content concisely, making it easy and quick for an investor to learn all of the necessary information. According to Section 33 (1)<sup>11</sup> of Companies Act of 2013, every document used to purchase a company's stock must include an abridged prospectus. This concise prospectus offers investors helpful information to help them make educated decisions while minimising the cost of public capital offerings.

**Shelf Prospectus**-As per section 31<sup>12</sup> of the 2013 Companies Act,2013,which covers shelf prospectus provisions—a public financial institution, corporation, or bank issue a shelf prospectus for specific securities or classes. The validity of shelf prospectus is for a year that shall start from the date of first offerings of the securities, and no additional prospectus is required for subsequent offers issued during the validity period. The company should file the information memorandum along with the Shelf Prospectus. The information memorandum should include all the essential details about the charges created and any changes in the company's financial status. <sup>13</sup>The companies must submit the memorandum within the

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<sup>10</sup> The Companies Act,2013, § Section 32, No.18, Acts of Parlimant,2013(India).

<sup>11</sup>The Companies Act,2013, § Section 33, No.18, Acts of Parlimant,2013(India).

<sup>12</sup> The Companies Act,2013, § Section 31, No.18, Acts of Parlimant,2013(India).

<sup>13</sup>SEC.gov | Filing and Amending a Form D Notice, <https://www.sec.gov/info/smallbus/secg/formdguide> (last visited Feb 25, 2024).

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timeframe specified before issuing future offers. When the firm makes an offer, the filed information memorandum is used as a Prospectus alongside the shelf Prospectus. Suppose a company or person receives applications for securities and advance subscription payments before making changes. In that case, they must notify the applicants and refund any monies received within 15 days if they withdraw their application. When the information memorandum is submitted by a shelf prospectus, it is considered a prospectus for any subsequent securities sale.

### **HOW TO IDENTIFY MISLEADING INFORMATION IN A PROSPECTUS**

Identifying incorrect material in a prospectus can be challenging, but investors can take various actions to lessen their chances of being deceived.

Methods for thoroughly reviewing the Prospectus:

1. Identifying language conflicts and ambiguities in the prospectus.
2. Investors should avoid unrealistic statements or company plans.
3. Investors should conduct their own research on the company and its management team to verify the information in the prospectus.
4. Look for red flags, such as overly optimistic estimates or refusal to disclose substantial risks.

### **LIABILITY FOR MISLEADING INFORMATION IN A PROSPECTUS**

There are two types of Liability available, they are- Civil Liability dealt under section 35 and Criminal Liability dealt under section 34 of the Companies Act,2013.

Civil Liability–As per Section 35<sup>14</sup> of the Companies Act of 2013, liability arises when an individual subscribes for securities based on a deceptive prospectus and seeks redress in contradiction of the firm and its directors, promoters, experts, and anyone else who sanctioned the prospectus's release.

Criminal Liability–As per Section 34<sup>15</sup> of the Companies Act of 2013, when the prospectus contains any false statement, any person who has authorised the prospectus's distribution will

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<sup>14</sup> The Companies Act,2013, § Section 35, No.18, Acts of Parliament,2013(India).

<sup>15</sup> The Companies Act,2013, § Section 34, No.18, Acts of Parliament,2013(India).

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be punished under Section 447. The punishment comprises of six months imprisonment, which can be extended upto ten years, or a fine, possibly equal to the amount involved in the fraud, or three times the amount engaged in the fraud, or both.

### **CONCLUSION**

A prospectus, basically is a legal document that can be produced by a public company only, which is looking to raise funds. The prospectus is a significant aspect in subscribers' decision-making when purchasing securities. It is an invitation to subscribe for shares of the company.<sup>16</sup>It provides a detailed information about the company's board of directors, secretary, management, capital structure, financial performance, current initiatives, and other pertinent information. A prospectus must meet all conditions and be registered to be considered valid. Prospectuses that have not been written are deemed void. Any prospectus misrepresentation, defined as an erroneous or misleading statement designed to deceive someone, was a misdemeanour punishable by a fine or imprisonment. A public company must submit a prospectus to obtain funds; however, when a private company becomes a public company, it obligated to issue a prospectus or a statement in lieu of a prospectus composed by the memorandum of association (MOA).

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<sup>16</sup>All About Prospectus of Company - Law Corner, <https://lawcorner.in/all-about-prospectus-of-company/> (last visited Feb 25, 2024).

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