

Ch. 8 Prospectus and Private Placement

Definition of Prospectus	Section 2(70) of the Companies Act, 2013 defines a prospectus as “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.”
Essentials of a Prospectus	A document should have following essentials to constitute a prospectus: (a) There must be an invitation to the public; (b) The invitation must be made “by or on behalf of the company or in relation to an intended company”; (c) The invitation must be “to subscribe or purchase”; (d) The invitation must relate to any securities of the company.
Invitation to public	A document is deemed to be issued to the public, if the invitation to subscribe for share capital is such as to be open to anyone who brings his money and applies in prescribed form, whether the prospectus was addressed to him or not. The test is not who receives the document, but who can apply for the securities in response to the invitation contained in it. However, an issue will not be “Public” if- (i) It is directed to a specified person or a group of persons, and (ii) It is not calculated to result in the securities becoming available to other persons.

PROVISIONS OF COMPANIES ACT, 2013 REGARDING PROSPECTUS

It is divided into 2 parts.
Part I deals with public offer and
Part II deals with private placement.

According to section 23(1), a public company may issue securities—
(a) to public through prospectus (referred to as "public offer") by complying with the provisions of Part I, or
(b) through private placement by complying with the provisions of Part II; or
(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and

in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

Section 23 to 42 of the Companies Act, 2013 deals with prospectus and allotment of securities.

The term "**public offer**" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus. [Section 42(2)]

Private placement offer letter

The company has to issue private placement offer letter in Form PAS-4 [Section 42(1)].

Maximum number of persons to whom offer can be made

The offer of securities or invitation to subscribe securities is private placement.
Rule 14(2)(b) of Companies (Prospectus and Allotment of Securities) Rules, 2014 states that such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year.

	<p>Any offer or invitation made to Qualified Institutional Buyers, or to employees of the company under a scheme of employees' stock option shall not be considered while calculating the limit of two hundred persons;</p> <p>The restrictions under sub-clause (b) would be reckoned individually for each kind of security that is equity share, preference share or debenture;</p> <p>Monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.</p>
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Private placement to be approved by special resolution	
Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014	
According to this rule, a company shall not make a private placement of its securities unless - the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations.	
Provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed.	
No fresh offer, in case of earlier offer being withdrawn, pending allotments with respect to earlier offer etc.,	
Section 42(3) states that no fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.	
Private placement under section 42 to be treated as public offer if conditions prescribed there under is not fulfilled	
Section 42(4) states that any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, shall be required to be complied with.	
Mode of payment of subscription money	
Section 42(5) states that all monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.	
Subscription money to be kept in a separate bank account	

Proviso to Section 42(6) states that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

- (a) for adjustment against allotment of securities; or
- (b) for the repayment of monies where the company is unable to allot securities.

No public advertisements for private placement

Section 42(8) states that no company offering securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer.

Return of allotment

Section 42 (9) states that whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment.

Rule 14 (4) of Companies (Prospectus and Allotment of Securities) Rules, 2014

Rule 14 (4) states that a return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3, along with a complete list of all security holders containing-

- (i) the full name, address, Permanent Account Number and E-mail ID of such security holder;
- (ii) the class of security held;
- (iii) the date of allotment of security;
- (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

Maintenance of Record of Private Placement offer

Rule 14(3) of Companies (Prospectus and Allotment of Securities) Rules, 2014 states that the company shall maintain a complete record of private placement offers in Form PAS-5.

A copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar and where the company is listed, with the Securities and Exchange Board within a period of thirty days of circulation of the private placement offer letter.

Penalty

Section 42 (10) states that if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Deemed Prospectus

Section 25(1) states that when a company allots or agrees to allot any securities of the company through any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of misstatements, in and omissions from, prospectus, shall apply as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities.

Matters to be stated in the prospectus

Section 26(1) states that every prospectus issued by or on behalf of a public company shall be dated and signed and shall state the information required under Section 26(1) read with Rule 3 of Companies (Prospectus and Allotment of Securities) Rules 2014.

Matters to be disclosed in the prospectus as per Section 26(1)**Matters to be disclosed as per Rule 3 of Companies (Prospectus and Allotment of Securities) Rules, 2014**

(i) Name and address of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, Underwriters, etc.

The names, addresses and contact details of the corporate office of the issuer company, compliance officer of the issuer company, bankers to the issue, stock brokers to the issue, credit rating agency for the issue.

(ii) Dates of the opening and closing of the issue.

The date relating to opening and closing of issue – A declaration which shall be made by the Board in the prospectus that the allotment letters shall be issued or application money shall be refunded within fifteen days from the closure of the issue or such lesser time as may be specified by SEBI.

(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 utilized and unutilized monies out of the previous issue in the prescribed manner.

A statement given by the Board that all monies received out of the issue shall be transferred to a separate bank account maintained with a Scheduled Bank.

(iv) Details about underwriting of the issue.

The names, addresses, telephone numbers, fax numbers and e-mail addresses of the underwriters and the amount underwritten by them.

(v) The written consent of directors, auditors, bankers to the issue, expert's opinion, if any, and all the persons named in the prospectus.

The consent of trustees, solicitors or advocates, bankers to the issue, etc.

(vi) The authority for the issue and the details of the resolution passed.	
(vii) Procedure and time schedule for allotment.	
(viii) Capital structure of the company in the prescribed manner.	The capital structure of the company shall be presented in the following manner, namely: - (a) the authorized, issued, subscribed and paid up capital; (b) the size of the present issue; (c) the paid up capital- (i) after the issue; (ii) after conversion of convertible instruments; (d) the share premium account (before and after the issue);
(ix) Main objects of public offer, terms of the present issue.	The prospectus to be issued shall contain the following particulars, namely: - (a) the objects of the issue; (b) the funding plan (means of finance); (c) the summary of the project appraisal report; (d) the schedule of implementation of the project.
(x) Particulars relating to— (a) management perception of risk factors specific to the project; (b) gestation period of the project; (c) extent of progress made in the project; (d) deadlines for completion of the project; and (e) any litigation or legal action taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;	The details of pending litigation involving the issuer, promoter, director, subsidiaries, group companies or any other person, whose outcome could have material adverse effect on the position of the issuer; The details of default and non-payment of statutory dues etc.
(xi) The details of default and non-payment of statutory dues etc.	
(xii) Details of directors including their appointments and remuneration.	The company shall disclose about directors in the following manner, namely: - (i) the name, designation, Director Identification Number (DIN), age, address, period of directorship, (ii) the remuneration payable or paid to the director by the issuer company, its subsidiary and associate co.

Reports to be set out in the Prospectus

Section 26(1)(b) states that the following reports to be set out in the prospectus for the purposes of the financial information, namely: —

Requirement under Section 26(1)(b)	Prescribed under Rule 4 and 5 of Companies (Prospectus and Allotment of Securities) Rules, 2014
(i) Reports by the auditors of the company with respect to its profits and losses and assets and liabilities.	The reports by the auditors with respect to profit and assets and liabilities - The report shall also include the amounts or rates of dividends.
(ii) Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries.	The reports relating to profits and losses for each of the five financial years immediately preceding the issue of the prospectus shall deal with the profits or losses of (a) the issuer company, if the company has no subsidiaries. (b) The issuer company along with the profits or losses of subsidiary company combined as well individually.
(iii) Reports made for assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus.	
(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly.	

Rule 5. Companies (Prospectus and Allotment of Securities) Rules, 2014

Other matters and reports to be stated in the prospectus.

The prospectus shall include the following other matters and reports, namely

(1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly –

- (a) in the purchase of any business; or
- (b) in the purchase of an interest in any business;
- (c) in purchase or acquisition of any immovable property

(2) If -

- (i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or are to be applied directly or indirectly and in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (ii) by reason of that acquisition, that body corporate shall become a subsidiary of the company.

(3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.

(4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.

(5) The matters relating to Material contracts; Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.

(6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under -

- (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made;
- (b) all other transactions which are material to the issuer company.

(7) The summary of reservations or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of their impact on the financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or adverse remarks.

(8) The details of any inspections or investigations initiated or conducted in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.

(9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.

When Section 26(1) is not applicable? [Sec 26(1) Matters to be stated in the prospectus]

Section 26(2) states that section 26(1) does not apply to

- (a) to the issue to existing members or debenture-holders of a company; or
- (b) to the issue of a prospectus relating to shares or debentures which are in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange.

Filing a copy of prospectus with registrar etc.,

Section 26(4) states that no prospectus shall be issued by or on behalf of a company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorized attorney.

Including a statement by an expert in the prospectus

Section 26(5) states that a prospectus shall include a statement made by an expert that he has given his written consent to the issue of the prospectus and has not withdrawn such consent

before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

Penalty for contravention of Section 26

Section 26(9) states that if a prospectus is issued in contravention of the provisions of this section, the **company** shall be punishable with fine which shall not be less than **fifty thousand rupees** but which may extend to **three lakh rupees** and every *person* who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to **three years** or with fine which shall not be less than **fifty thousand rupees** but which may extend to **three lakh rupees, or with both.**

Variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued

Section 27 (1) states that a company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.

Rule 7 of Companies (Prospectus and Allotment of Securities) Rules, 2014

1. When the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain the following particulars, namely

- the original purpose or object of the Issue;
- the total money raised;
- the money utilized for the objects of the company stated in the prospectus;
- the extent of achievement of proposed objects (that is fifty percent, sixty percent, etc.);
- the unutilized amount out of the money so raised through prospectus,
- the particulars of the proposed variation in the terms of contracts referred to in the prospectus;
- the reason and justification for seeking variation;
- the proposed time limit within which the proposed varied objects would be achieved;
- the risk factors pertaining to the new objects; and
- the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

2. The notice in respect of such resolution to shareholders, shall also be published in the newspapers.

The advertisement of notice shall be in **Form PAS-1** and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

3. The notice shall also be placed on the web-site of the company, if any.

4. The company shall not use any amount raised by it through prospectus for buying or trading in equity shares of any other listed company.

Dissenting shareholders to variation of terms are to be given exit option

Section 27(2) states that the dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Offer of Sale by Members

Where offer of sale of shares is made by members to the public, it shall for all purposes, be deemed to be a prospectus issued by the company.

Section 28(1) states that where certain members of a company propose, in consultation with the Board of Directors to offer, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

Section 28(2) further states that any 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 and all laws and rules made thereunder 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.

Rule 8 of Companies (Prospectus and Allotment of Securities) Rules, 2014

(1) Rule 8 states that all rules made for the issue of prospectus shall be applicable in section 28 except for the following, namely: -

- (a) the provisions relating to minimum subscription;
- (b) the provisions for minimum application value;
- (c) the provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and

(2) The prospectus issued under section 28 shall disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

Dematerialization of Securities-mandatory

Section 29 (1) states that

- (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 dematerialized form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Section 29(2) further states that any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialized form or issue its securities in physical form in accordance with the provisions of this Act.

Shelf Prospectus

Meaning	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.
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The concept of shelf prospectus will save expenditure and time of the companies in issuing a new prospectus every time they wish to issue securities to the public within a period of one year.

'Shelf prospectus' means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Reasons for the issue of Shelf Prospectus	<p>Raising finance from the public by means of various securities is a time consuming process.</p> <ul style="list-style-type: none"> • Negotiations with various parties have to be finalized. • Matters to be specified in the prospectus have also become quite large and highly informative particularly under the SEBI guidelines. • Recently, developmental financial institutions like IDBI and ICICI have successfully raised money from the public through issue of Bonds. • Every time any such issue comes a fresh prospectus is required to be filed. • Although it is a repetitive matter, the procedural aspects take a lot of time. • In order to minimize the burden on such institutions, it is now provided to introduce shelf prospectus, which will be valid for a period of one year from the date of opening of the first offering of the shelf prospectus.
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According to Section 31

1. Any class of companies, as prescribed by the Securities and Exchange Board may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under such prospectus.

Further, in respect of a second or subsequent offer issued during the period of validity of shelf prospectus, no further prospectus is required.

2. A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer and other prescribed changes, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under such prospectus.

3. Where an information memorandum is filed, every time an offer of securities is made as aforesaid, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Rule 10 of Companies (Prospectus and Allotment of Securities) Rules, 2014 states that the information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the **Companies (Registration Offices and Fees) Rules, 2014** within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Red-Herring Prospectus

Meaning	"Red Herring Prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.
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Red herring prospectus is issued during book building process.
Red herring prospectus contains either the floor price of securities offered or a price band along with the range within which the Bids can move. The applicants bid for the shares quoting the price and the quantity that they would like to bid at.

Section 32 of the Act deals with Red Herring Prospectus.

It provides that—

1. A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
2. A 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.
3. A red herring prospectus shall carry the same obligations as are applicable to a prospectus. Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
4. Once the offer for securities is closed, a final prospectus stating therein the total capital raised whether by way of debt or share capital, the closing price of the securities and any other details which are not complete in the red-herring prospectus shall be filed with SEBI in the case of listed public company and in any other case with the Registrar of companies only.

Abridged Prospectus

Meaning	"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 2(1)]
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Section 33 states that no form of application can be issued for the purchase of any securities of a company unless it is accompanied by an abridged prospectus.

There are, however, **four exceptions to this rule:**

- (a) where the offer is made in connection with the bona fide invitation to a person to enter into an underwriting agreement with respect to such securities;

(b) where the securities are not offered to the public;

(c) where the offer is made only to the existing members or debenture holders of the company with or without a right to renounce;

(d) where the shares or debentures offered are in all respects uniform with shares or debentures already issued and quoted on a recognized stock exchange.

Attached to application forms	A company shall not supply any application form for shares or debentures unless the application form is accompanied by abridged prospectus. In other words, abridged prospectus shall be attached by way of a perforated line to every application form issued for subscription of shares or debentures. The abridged prospectus and share application form shall bear the same printed number.
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Furnishing of prospectus	A copy of the prospectus shall be furnished to any person who makes a request (before closing of the subscription list) for a copy of the prospectus.
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If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

GOLDEN RULE FOR FRAMING THE PROSPECTUS

Untrue Statement	A statement included in a prospectus shall be deemed to be untrue if statement is misleading in the form and context in which it is included.
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Omission	If the omission from a prospectus of any matter is calculated to mislead the investors, the prospectus is deemed to be a misleading prospectus.
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Consequence	Where an untrue statement occurs in a prospectus, there may arise (i) civil liability (ii) criminal liability. Every person who is a director of the company at the time of the issue of the prospectus, every promoter of the company and every person, including an expert, who has authorized the issue of a prospectus, shall be liable.
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Golden Rule for framing the prospectus	This Golden Rule was pronounced New Brunswick, etc., Co. v. Muggeridge . The golden rule is that the prospectus must present the complete picture of the company. It must disclose all material facts truly, honestly and accurately. All facts which are likely to influence the decision regarding applying for shares must be disclosed. The prospectus should not contain any untrue or misleading statement. Suppression of a fact, howsoever remote, will make a prospectus misleading if inclusion of such fact might have affected investor's decision to subscribe for the shares.
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In **Rex Vs. Kylsant**, all statements in the prospectus were literally true but it failed to disclose that the dividends stated in it as paid, were not paid out of trading profits, but out of realized capital profits. The statement that the company had paid dividends for a number of years was true. But the company has incurred losses for all those years (1921-27) and no disclosure was made of this fact. The prospectus was held to be false in material particulars and the managing director and chairman, who knew that it was false, were held guilty of fraud.

REMEDIES AGAINST-THE COMPANY FOR MIS-STATEMENT IN PROSPECTUS

1. Rescission of contract	An investor has a right to rescind the contract to take shares if he subscribes shares on the basis of a false or untrue statement contained in the prospectus, i.e., where the prospectus is a misleading prospectus.
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Loss of right of Rescission -Where a shareholder gives his affirmation in the following ways: -

1. Attempts to sell the shares
2. Executes a transfer
3. Pays calls or receives dividend
4. Attends and votes at a general meeting
5. Unreasonable delay in cancellation
6. Winding up of the co. starts

2. Damages for Deceit	<ul style="list-style-type: none"> • Any person induced by a fraudulent statement in a prospect to take shares is entitled to sue the co. for damages. • He must prove the same matters in claiming damages for deceit as in claiming rescission of the contract. • He cannot both retain the shares and get damages against the co.
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Andrews v. Mockford

The directors sent a copy of prospectus of the company to Mr. A. The directors knew that it contains false facts and it can induce A to purchase shares therein. A did not subscribe for the shares at that time. However, not much shares were purchased by the public, the directors thereupon fraudulently published a telegram in newspaper. A believing in the truth of the telegram was induced to purchase shares in the open market.

The directors were held liable for the systematic fraud. "The function of the prospectus was not exhausted, and the false telegram was brought into play by defendants to reflect back upon and countenance the false statements in the prospectus."

REMEDIES AGAINST PROMOTERS, DIRECTORS AND EXPERTS or CIVIL LIABILITY FOR MIS-STATEMENT IN PROSPECTUS

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:

- (i) Damages for fraudulent misrepresentation,
- (ii) Compensation under Section 35 of the Act,
- (iii) Damages for non-compliance with the requirements of Section 26 of the Act.

(i) Damages for fraudulent misrepresentation	An allottee may sue the director for damages for deceit, if there are fraudulent misrepresentations in the prospectus. But the directors will not be liable for damages for misstatement if they believed them to be true. [Derry v. Peek]
(ii) Compensation under Section 35 of the Act,	An allottee is also entitled to claim compensation from directors, promoters and any other persons who authorized the issue of the false prospectus, for damages sustained by reason of any untrue statement in it. According to Section 35(1), the following persons are liable to pay compensation to every person who has sustained loss or damage by reason of untrue statement included in a prospectus: (a) every person who is a director of the company at the time of the issue of the prospectus; (b) every person who has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, (c) every person who is a promoter of the company; (d) every person who has authorized the issue of the prospectus; and (e) is an expert referred in the prospectus.
<p>When civil liability can be avoided [Section 35(2)] No person referred above shall be liable for civil action if he proves:</p> <p>(a) that having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or</p> <p>(b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or</p> <p>(c) an expert may also escape the liability, if he proves that having given his consent under Section 26 to the issue of the prospectus, he withdrew it in writing before delivery of a copy of the prospectus for registration to the Registrar.</p>	
(iii) Damages for non-compliance with the requirements of Section 26 of the Act	Read Sec 26 (covered earlier)

CRIMINAL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS (Sec. 34)

According to Section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447.

Section 447 provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

However, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

However, where a person who has authorized the issue of prospectus proves, either that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary may be relieved from the criminal liability.

Who is entitled to remedies?

The right to claim compensation for any loss or damage sustained by reason of any untrue statement in a prospectus is available only to a person who has “subscribed” for securities on the faith of the prospectus containing untrue statement.

The word ‘subscribed’ denotes that the shares were acquired directly from the company by allotment.

A subsequent purchaser of shares in the open market has no remedy against the company or the directors or promoters.