PROSPECTUS & ITS FACETS IN REFERENCE TO THE COMPANIES ACT 2013

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ABSTRACT

The objectives, components, and registration of the prospectus, as well as judicial pronouncements regarding the same, are the subject of this analysis. A prospectus is a legal disclosure document that must be filed with the Securities and Exchange Commission (SEC) or a local regulator to provide public information about an investment offering. Investors may be interested in learning more about the company, its management team, and its most recent financial performance from the prospectus.

Keywords: Red Herring, Abridged, Debentures, Public Offer.

INTRODUCTION

A prospectus is a disclosure document that serves as an invitation to the public to subscribe to the company's shares. It provides the prospectus with numerous material data so that investors can make informed decisions about their investments and safeguard their rights. It is a paper with thorough information about the business. It is a request for the general public to subscribe to the company's shares or debentures. Some businesses choose not to sell their shares directly to the public, instead distributing the entire share capital to a middleman who then advertises the shares to the general public. Any document used to make such a public offer for sale is regarded as a prospectus. It is strictly forbidden for Private Limited Companies to publish a prospectus and to invite the general public to subscribe for their shares only public limited enterprises are permitted to the prospectus. It is a free and open invitation to the general public. The prospectus is just an invitation to offer; it is not, in a legal sense, an offer. The public should receive a piece of writing that is designed to look like a prospectus.

COMPONENTS TO BE INCLUDED IN THE PROSPECTUS

The following components should be included in a prospectus:

- Public invitations must be made available.

*THIRD YEAR, AMITY UNIVERSITY, UTTAR PRADESH, LUCKNOW CAMPUS.
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- The invitation must be sent on the company's or planned company's behalf.
- The invitation needs to be purchased or subscribed to.
- Shares or debentures must be included in the invitation.
- Before being released to the public, a prospectus needs to be registered with the Registrar of Companies.
- When a corporation wants the general public to buy its shares or debentures, the prospectus must be released.

Section 2(70): Section 2(70)[1] of the Act defines 'Prospectus'. Every document that is referred to or distributed as a prospectus falls under the definition of the prospectus. Any notification, circular, advertisement, or other material that serves as an invitation to offers from the general public is also included in this. Any securities of a corporate body should be the subject of such an invitation to offer. Prospectuses such as red herring and shelf are also regarded as prospectuses.

In other words, a Prospectus is a legal document that describes securities that a firm has placed up for sale. The prospectus often provides information on the company's operations and the reason why the securities are being issued.

OBJECTIVES OF PROSPECTUS

1. To know about the company's investment goals and methods

2. To understand the company's purpose and goals for the future.

3. To be aware of the company's assets and liabilities.

4. To be aware of the company's directors, shareholders, and denture holders rights.

5. To understand the company's financing structure and geographic location.

6. To learn the minimum yearly subscription cost.

7. To be aware of the steps involved in submitting a share or debenture application.

8. To be aware of the classes, face value, application fee, and share allocation.

[1] Companies Act 2013, s 2(70)

9. To learn details on the company's managing director, directors, promoters, bankers, brokers, and solicitors.

WHAT A DOCUMENT MUST CONTAIN TO QUALIFY AS A PROSPECTUS?

The following conditions must be satisfied for considering any document as a prospectus:[2]

- The document should either invite the subscription to public share or debentures or should invite deposits.
- Such an invitation should be made to the public.
- The invitation should be made either by the company or on behalf of the company.
- The invitation should relate to shares, debentures, or other instruments.

According to **Ralph Nieders**, '*If the Prospectus had mentioned the possibility, it might have enhanced the value of stocks*.'[3]

A prospectus is a legal document that describes a security that a corporation has placed up for sale. It is a legal disclosure document that must be filed with the Securities and Exchange Commission (SEC) or a regional regulator and informs the public about an investment offering. The prospectus includes details about the business, its management group, recent financial results, and other relevant information that potential investors would be interested in.

Section 2(70) Act of 2013 - A prospectus is any document that is described or released as a prospectus, as well as any notification, circular, advertisement, or other documents that serves as an invitation to offers from the general public. Any securities of a corporate body should be the subject of such an invitation to offer. Prospectuses on the shelf and red herring prospectuses are also regarded as prospectuses.[4]

As an invitation to subscribe to a public share or document, a prospectus should be made available to the public. It may be issued on the firm's behalf or directly by the corporation. Each publicly traded company either releases a prospectus or submits a statement in its place. An independent business is not required to do this. However, when a private firm changes its status

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[2] Pankuri Anand, 'Concept of Prospectus under The Companies Act, 2013' (*iPleaders*, 18 June 2019) <https://blog.ipleaders.in/concept-prospectus-companies-act-2013/> accessed 06 April 2023

[3] Palash Bhargav, 'An Analysis: Prospectus' (*Legal Service India*) <https://www.legalserviceindia.com/legal/article-9698-an-analysis-prospectus.html> accessed 06 April 2023

[4] Companies Act 2013, s 2(70)

from private to public, it must either file a prospectus (if one has already been issued) or a statement in lieu of a prospectus.

The provisions regulating the marketing of the Prospectus are found in *Section 30*[5] *of the Companies Act of 2013*. This section states that it is required to specify the contents of the company's memorandum regarding the object, members' liabilities, the amount of the company's share capital, signatories and the number of shares subscribed by them, and the capital structure of the company whenever the advertisement of a prospectus is published in any way.

Both the business and the investors gain from the prospectus. The prospectus serves as a mirror in which the firm is reflected. By giving investors information about the business, it aids in decision-making. Investors look at a company's financial situation to determine whether it is sound enough to fulfill its obligations. The prospectus was released by the corporation in an effort to raise money. It aids businesses in obtaining funding from the market. When a firm makes its initial public offering, this aids in marketing the business.

PROSPECTUS COMPONENTS

Section 26[6] provides the details that a Prospectus should contain. The Prospectus should be duly signed and dated for a public company[7].

The following information should be included in a prospectus: the name and registered address of the office, its secretary, auditor, legal counsel, bankers, trustees, etc.

- Dates on which the issue was opened and closed.
- Board of Directors statements regarding distinct bank accounts where issue receipts are to be held.
- Statement from the Board of Directors regarding the specifics of the use and non-use of receipts from prior issues.
- The approval of the directors, auditors, bankers, and professional opinions.
- Details of the resolution that was adopted and authority for the matter.
- Scheduled steps and timing for the allocation and issuance of securities.

[5] Companies Act 2013, s 30
[6] Companies Act 2013, s 26
[7] Palash Bhargav (n 3)

- The capital structure in the way that might be recommended.
- The reason for making a public offer.
- The company's goal and where it is located.
- Specifics about the project's risk considerations, its gestation period, any litigation that is now underway, and other significant project-related information.
- Minimum subscription and the premium payment amount.
- Information on the directors, including their compensation and level of ownership.
- Reports intended to provide financial information, such as the auditor's report, the five-year profit and loss report, the business and transaction reports, the declaration of compliance with the Act's provisions, and any other report.

According to section 26 of the Company's Act 2013[8], a company may only publish its prospectus on the day of publication; it may not be published earlier or later. For registration, a copy of the prospectus should be given to the registrar. The date the Prospectus was delivered to the registrar should also be included. All of the directors whose names are listed in the prospectus must sign the document.

REGISTRATION OF PROSPECTUS

Section 26(7)[9] states the registration of a prospectus by the registrar'. **According to this section, when the registrar can register a prospectus when:[10]**

- It fulfills the requirements of this section, i.e., section 26[11] of the Companies Act, 2013; and
- It contains the consent of all the persons named in the prospectus in writing.

PUBLISH PROSPECTUS

A corporation must publish its prospectus within 90 days of submitting a copy to the registrar.[12] The Prospectus will be deemed invalid if it is not delivered within the allotted period.

[8] Companies Act 2013, s 26
[9] Companies Act 2013, s 26(7)
[10] Pankhuri Anand (n 2)
[11] Companies Act 2013, s 26
[12] *Ibid*

The prospectus will be deemed unlawful if it violates section 26 of the Act, and the company will be subject to punishment under section 26(9)[13] of between Rs. 50,000 and Rs. 3,00,000 or imprisonment for up to three years. The following criminal provisions apply to anyone who learns that a prospectus is being issued in violation of section 26 after being made aware of that information.

IS THE PROSPECTUS A WRITTEN DOCUMENT OR ORAL?

Whether a television commercial and visual clips that provide the necessary company information, as well as information about new shares and debentures, are considered a prospectus? No, The Prospectus cannot be spoken during. The Prospectus is a document and as such is required to be written under Section 25[14] of the Companies Act.

TYPES OF PROSPECTUS

The Public Corporation may publish one of four types of prospectuses in accordance with the terms of the Companies Act of 2013.

1. Deemed Prospectus: A Deemed Prospectus is a piece of writing that advertises the sale of securities to the general public, in accordance with Section 25[15] of the Companies Act of 2013. In a presumed prospectus, the corporation transfers whatever securities it owns to a third party, frequently referred to as an Issue House, who then advertises a second sale of those securities to the general public.

2. Red Hearing Prospectus: A Red Hearing Prospectus is a prospectus produced by a Public Company with the intention of examining the demand for securities and the price at which securities may be offered, as per the provisions of Section 32[16] of the Companies Act, 2013, before releasing an actual prospectus[17]. It omits key information on the quantity and cost of the securities it contains.

[13] Companies Act 2013, s 29(9)
[14] Companies Act 2013, s 25
[15] *Ibid*
[16] Companies Act 2013, s 32
[17] Companies Act 2013, s 32(1)

As per Section 32(3)[18] of the Act, the red herring prospectus must be filed with the Registrar at least three days before the opening of the subscription list. If there is a difference between the red hearing and the actual prospectus, the actual prospectus must note the difference and include the title "As Variations."

3. Shelf Prospectus: A shelf prospectus is a prospectus for which the securities or the class of securities included therein are issued for subscription in one or more issues over a specific length of time without the issuance of another prospectus, as defined under Section 31[19]. According to regulations set forth by the Securities & Exchange Board of India (SEBI), any class or class of firms may submit this prospectus. The shelf prospectus's validity period is one year or less. No additional issuance of the prospectus is necessary for the subsequent offer of securities within the specified time. Before making a future offer of securities in the case of a Shelf Prospectus, the company must file an Information Memorandum with the registrar.

4. Abridged Prospectus: According to Section 33[20], every form of application issued for the purchase of any securities must be accompanied by a memorandum embodying the key points of a prospectus as may be defined by the SEBI in regulations in this regard. A company will be subject to a fine of 50000 for each violation of the rules governing the attachment of the abbreviated prospectus.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED?

According to Section 26, the following situations do not require the issuance of a prospectus:[21]

1. When the shares or bonds are not made available to the general public.

2. If current shareholders or debenture holders are to receive shares or debentures with or without the option to renounce them (reject). For instance, when shares are privately sold to fewer than 50 people (a private placement is defined as 49 or fewer, with 50 or more being deemed a public issue).

[18] Companies Act 2013, s 32(3)
[19] Companies Act 2013, s 31
[20] Companies Act 2013, s 33
[21] Companies Act 2013, s 26

3. There is no need to prepare a new prospectus if the shares and debentures that will be distributed are identical to the existing shares and debentures (shares and debentures that have already been issued) or similar to them in character.

4. Where it is prohibited by law (Section 2(35)[22] does not require a private company to issue a prospectus).

5. When a newspaper advertisement is used to invite the public to subscribe for shares or debentures of a corporation.[23]

6. When extending an invitation to a person who has a share and bond underwriting agreement.

CASE LAWS

***APL Industries Ltd. v Securities and Exchange Board of India*:**[24] When the public issue of shares was undersubscribed, the SEBI (Securities and Exchange Board of India) ordered the company to refund the subscriber's subscription fee.

Derry v Peek[25]: A business's prospectus stated that the company has the right to use steam power to move its trams. Yet, the body that had the power to approve the Board of Trade declined to do so. The Board of Directors was not found to have committed fraud because they were sincere and made the statement in good faith, according to the court, and there is no inaccuracy in the prospectus. These weren't meant to mislead anyone.

Henderson v Lacon:[26] The directors and their cronies are said to have subscribed for a sizable amount of the shares in the prospectus, and they are now offering the remaining shares to the public. The directors had actually only purchased 10 shares between them. The court determined that the subscribers may cancel the agreement.

Arnison v Smith:[27] The court held that, in the prospectus, the non-disclosure of facts does not amount to misrepresentation unless the concealment has prevented an adequate appreciation of what was stated.

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[22] Companies Act 2013, s 2(35)
[23] Companies Act 2013, s 30
[24] *APL Industries Ltd. v Securities and Exchange Board of India* (2017) 200 Comp Cas 440 (Del)
[25] *Derry v Peek* [1889] LR 14 AC (HL)
[26] *Henderson v Lacon* [1867] LR e Eq 249
[27] *Arnison v Smith* [1889] LR 41 Ch D 348

Peek v Gurney:[28] The judge ruled that -

- Every man must be held accountable for the results of any false statements he makes to another and the harm they cause.
- The aforementioned false statement was made with the purpose that a third party would act on it in a way that would cause them harm.
- Any harm must have an immediate, not future, effect.

CONCLUSION

A public firm must only issue the prospectus as it is about to raise money because it is a legal document. The prospectus is very crucial in helping investors decide whether to subscribe for securities (shares, debentures, and other related instruments). It is essentially a request for an offer to subscribe for shares. It contains comprehensive details on the Board of Directors, the Company Secretary, and the management of the firm, the capital structure, the financial results, the most recent projects the company has undertaken, and other relevant data.

It must be registered and contain all requirements to be considered a genuine prospectus. A prospectus is deemed invalid if it has not been registered. Any misstatement of a prospectus, such as an inaccurate statement or a statement intended to deceive someone, was considered a crime and the offender was subject to a fine or imprisonment. To raise capital, a public business must release a prospectus; however, if a private company decides to go public, the MOA should be accompanied by a prospectus or a statement in place of a prospectus.

[28] *Peek v Gurney* [1873] LR 6 (HL) 377