Format for prospectus

Public company not going to public for capital: Contents of prospectus in accordance with Schedule III(SILP)

Public company limited by shares intending to go public for share capital: Format for prospectus in accordance with Schedule II

Private company converted into public company at their option U/S 44: SILP as per Schedule IV

Private company: not required to issue prospectus
When prospectus need not be issued?

- Private company
- Closely held public company desiring to raise capital internally
- When there is an underwriting agreement u/s 56(3)
- Issue to existing share holders on right basis u/s 56((5)(a))
- Issue similar or uniform to the shares or debentures previously issued in all respects and are dealt in or quoted on a recognized stock exchange (Section 56((5b)).
Golden rules for prospectus

- “nothing should be stated as a fact which is not a fact and no fact should be omitted to be stated”
- All material facts likely to influence the decision regarding applying for share shall be disclosed.
- Misleading information should not be given
- Statement in such form and context to enable the investors to make a well informed rational decision.
Requirements for issue of prospectus

Registration of prospectus

Dating of prospectus

Approval of prospectus

Registration of prospectus

Dating of prospectus

Approval of prospectus
Dating of prospectus

Section 55

i) prospectus must be dated.

ii) if no date is mentioned, the date of publication of prospectus shall be the dating of prospectus
Registration of prospectus

1. BOARD RESOLUTION APPROVING ISSUE OF PROSPECTUS
2. SIGNING OF PROSPECTUS BY DIRECTORS OR PROPOSED DIRECTOR NAMED THEREIN
3. DELIVERING PROSPECTUS TO ROC FOR REGISTRATION

Registration on compliance with Section 56
Issue of prospectus within 90 days from the date of lodging a copy for registration with ROC
Documents to be lodged

Documents to be submitted for registration in addition to prospectus:

a) Consent of the expert named in the prospectus.

b) Copy of every contract required under cl. 16 Sch II in writing.
   where the contract is not in writing a memorandum giving full particulars thereof.
c) Adjustments made in financial statements required to be included in the prospectus as required in PART II of Sch II duly signed by the persons concerned with reasons therefor.

d) A written statement of consent by an Auditor, Legal advisor, Attorney, Banker of the company intended to act without capacity.
PENAL CONSEQUENCE

If the prospectus is issued without delivering a copy to ROC for registration then, the company and every officer in default shall be punishable with fine up to Rs.50,000.
Before delivering the prospectus for registration, approval of prospectus by following authorities is required:
1) all lead managers to the issue
2) stock exchanges where the shares are listed
3) lead financial institution underwriting the issue
4) SEBI
Vetting of prospectus by SEBI

- Vetting by SEBI to ensure adequacy of disclosures *does not* amount to approval by SEBI.

- If SEBI informs ROC that the contents of prospectus are in contravention of statutory provisions, ROC shall not register the prospectus.
KINDS OF PROSPECTUS
1. ABRIDGED PROSPECTUS

Sec 2(1) "Memorandum containing salient features of prospectus"

Sec 56(3) "No company can issue application form for allotment of shares or debentures unless it is accompanied by a memorandum containing salient features of prospectus"
Circumstances in which issue of abridged prospectus is not essential

1) Shares or debentures are not offered to public.
2) There is an underwriting agreement.
3) There is a rights issue.
4) The company is a listed company and the issue is uniform to the previous issue in all respects.
On contravention of the provisions of Section 56(3), the concerned person is punishable with fine upto Rs.50,000.

Company issuing such memorandum, on request from any subscriber, shall furnish a copy of prospectus, before closing for the subscription list.

The format for abridged prospectus i.e. form2A has been revised so as to provide for more disclosures from investor’s perspective.
2. DEEMED PROSPECTUS

Section 64

When the shares or debentures are issued by a company through ISSUE HOUSE, the document issued by issue house shall contain the requirements of prospectus.

The offer document issued by ISSUE HOUSE is called **DEEMED PROSPECTUS or PROSPECTUS BY IMPLICATION.**
Such an offer document is treated as a prospectus issued by the company.

Signatory for the document (deemed prospectus)

Person making the offer is:
company: At least two directors
firm: one half of the partners
as the case may be.
Prospectus issued by a financial institution or bank for one or more issue of securities.

Object of such financial institution or bank:

- financing (giving loans)
- subscribing to the capital of industrial enterprises engaged in infrastructural financing.
Once shelf prospectus is filed with ROC, the company is required to file prospectus at every stage of issue of securities during the validity period of shelf prospectus (normally valid for one year).
Information memorandum

Company filing shelf prospectus is required to file information memorandum prior to making second and subsequent issue of securities. disclosing all material facts relating to:

a) new charges created
b) changes in financial position between the first offer, previous offer and subsequent offer of securities.
Process undertaken prior to filing of prospectus by which
---demand for securities proposed to be issued is elicited and
---the price and the terms of issue for such securities is assessed, by means of a Notice, Circular, Advertisement, Document.
Prospectus which does not have complete details on
- the price of securities offered and
- quantum of securities offered

Public company *may* circulate an *information memorandum* prior to filing of a prospectus.
Time limit

- Filing of prospectus:
  Red herring prospectus: 3 days before the opening of subscription list.

Prospectus: before the opening of subscription list
Obligations are similar to that of a prospectus.

Variation in the information memorandum and red herring prospectus shall be highlighted in the final prospectus.
Advance subscriptions received by way of postdated cheques or stock invest shall not be encashed by the company or issuing bankers or underwriters

unless

such prospective subscribers have been intimated about the variation in information memorandum or red herring prospectus and given an opportunity to withdraw their application.
Withdrawal of application in writing by applicants or proposed subscribers shall be done *within 7 days* from the date of such intimation.
Consequences of contravention

On contravention of procedures laid out for intimation of variation in information memorandum or red herring prospectus by bankers or company or underwriters the applicants are entitled to get back their original application and interest @ 15% from the date of encashment till payment of realization.
Final prospectus

upon closing the offer of securities a final prospectus shall be filed with ROC & SEBI in the case of listed companies stating-
- total capital raised
- closing price of securities and
- other details not complete in red-herring prospectus.
Public limited company limited by shares is required to file SILP in the following circumstances:

i) when it doesn't issue a prospectus to the public for subscription as it intends to raise capital through its internal sources.

ii) having issued a prospectus it has not proceeded to allot any of the shares offered to the public as minimum subscription is not received
Registration of SILP

- Content of SILP: Requirements specified in PART I, PART II and PART III of Sch III.
- SILP has to be signed by every director or proposed director named therein.
- SILP has to be delivered to ROC at least 3 days prior to first allotment of shares or debentures.
Penalties

- Contravention of registration of SILP procedural requirements: company and every director concerned punishable with fine upto Rs.10,000.
### MIS STATEMENT IN PROSPECTUS

<table>
<thead>
<tr>
<th>Statement included is deemed to be untrue if the statement is misleading in form and content in which it is included.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Omission from a prospectus of any matter is calculated to mislead, prospectus in respect of such omission is deemed to be a prospectus with untrue statement.</td>
</tr>
</tbody>
</table>
Remedy for mis statement in prospectus

Applicant of shares in pursuance of misleading prospectus can claim relief and avoid allotment if he can show that the mis statement was:

a) one of fact and not of law or an expression of opinion
b) material and
c) acted upon by him
Remedy for mis statement in prospectus (contd.)

Further he can get compensation if he proves that:

a) those acting on behalf of the company acted fraudulently.

b) they have been authorised to act on behalf of the company and

c) he suffered loss or damage.
LIABILITY FOR MISSTATEMENT

SECTION 62  CIVIL LIABILITY

SECTION 63  CRIMINAL LIABILITY
Every director
promoter
expert
or person who authorised the issue of
prospectus
Shall be liable to compensate every subscriber for loss or damage caused due to mis statement in prospectus.
CIVIL LIABILITY

A) Against the company:
   v Rescission of contract:
      Shareholder may return the shares and take back his money with interest. Such rescission should be within reasonable time (before commencement of proceedings of winding up of company or before he does any inconsistent act like accepting dividend.)
Applicant should prove that the misstatement was one of fact and not of law, material and acted upon by him.

PEEK –Vs-GURNEY

• To avoid the shares the applicant should have purchased the shares in pursuance of the misleading prospectus and not in share market.
B. Against the directors, promoter, etc:
  a) suit for damages:
  shareholder induced to take shares by misleading prospectus may claim damages from the director, promoter or person authorised the issue of such prospectus.
COMPENSATION CLAIM

1. Compensation can be claimed for fraudulent misrepresentation only on proving that-a director, promoter or person concerned acted fraudulently and he suffered loss.
No compensation is payable if the directors are able to prove to the satisfaction of the court that they acted bona fide, honestly believed the statements to be true.
CRIMINAL LIABILITY (Sec 63)

1. Fine: Every person who authorised the issue of the prospectus containing *untrue statement shall* be punishable with *imprisonment upto 2 years or fine upto Rs.50,000 or both.*

2. *He* will not be subject to the penal provisions if he proves that the statement was immaterial or that he had reasonable ground to believe that the statement was true.
Defenses available to avoid civil liability (Sec 62(2))

No person shall be liable for misstatements if he proves that,

a) having consented to become a director, he withdrew his consent before the issue of prospectus and the same was issued without his authority or consent.

b) the prospectus was issued without his knowledge or consent and on becoming aware of the issue he gave a reasonable public notice to that effect.
Defenses to avoid civil liability (Contd.)
c) On becoming aware of the untrue statement after the issue of prospectus and before allotment he withdrew his consent and gave reasonable public notice of that fact., or
d) He had reasonable ground to believe and did believe up to the date of allotment that the statement was true.
Defenses to avoid(Contd.)

e) The untrue statement was a fair and correct copy of a report or opinion or valuation of an expert who was competent to make the same and he had reasonable ground to believe and did believe that the expert had not withdrawn his consent before delivery of the prospectus for registration.

f) The untrue statement was a fair and correct representation or copy of public official document.
Expert and his Liability on misstatement in prospectus.

Section 59(2) – Expert includes an
• Engineer
• Valuer
• Any other person
Whose profession gives an authority to a statement made by him.
Defenses to avoid liability

- An expert who has given his consent for the prospectus **U/S 58**, would be liable for untrue statement therein.
- Expert would not be liable if he can prove that-
  a) he withdrew his consent before the delivery of prospectus for registration.
  b) on becoming aware of the misstatement, he has withdrawn his consent before allotment and has given public notice thereof.
  c) he was competent to make the statement and upto the time of allotment he had reasonable ground to believe that the statement was true.
THANK YOU