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**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

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PROSPECTUS AND ALLOTMENT OF SECURITIES

Section 23 to Section 42 of Companies Act 2013 read with Companies
(Prospectus and allotment of securities) Rules 2014



INTRODUCTION

Funding is crucial for corporate, not only to invest and to expand, but also to operate their daily business. When a company needs to raise funds, it may look at various options: debt, equity, venture capital, etc.

Equity capital is funds paid into business by investors in exchange of common or preferred stock.

An alternative form of capital is debt financing by issuing various bonds, debentures, bills or notes.



INTRODUCTION

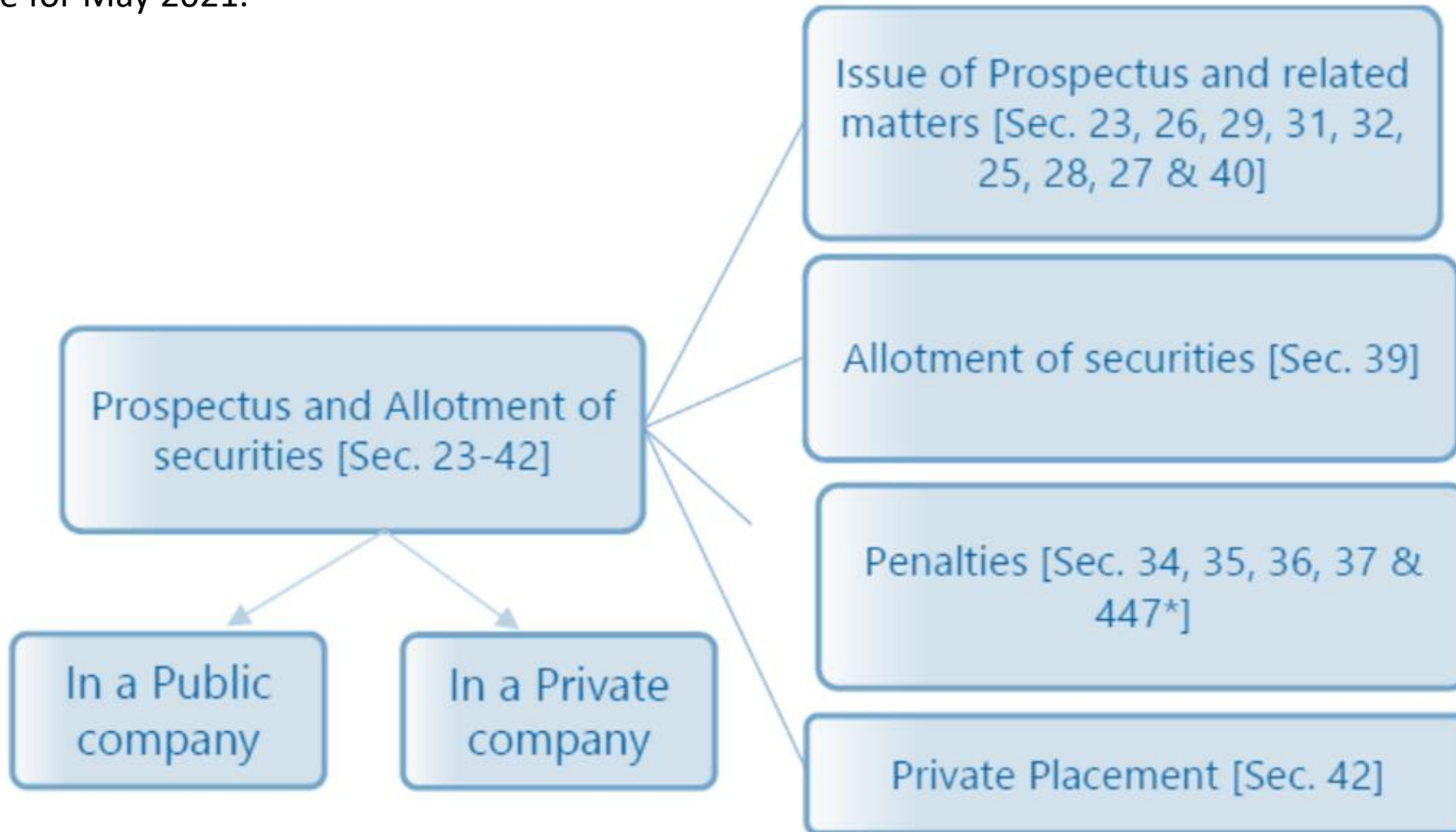
The Companies Act, 2013 have laid down varied conditions and procedures for issue of various securities and debt instruments by a company.

- This Chapter consisting of sections 23 to 42 deals with the prospectus and allotment of securities.
- The Act provides the manner in which securities can be issued by both public and private companies.
- Chapter III of the Act covers the issue of securities under two headings as under:
 - **Part I** - It contains provisions for the issue of securities through public offer;
 - **Part II** - It contains provisions for the issue of securities through private placement.



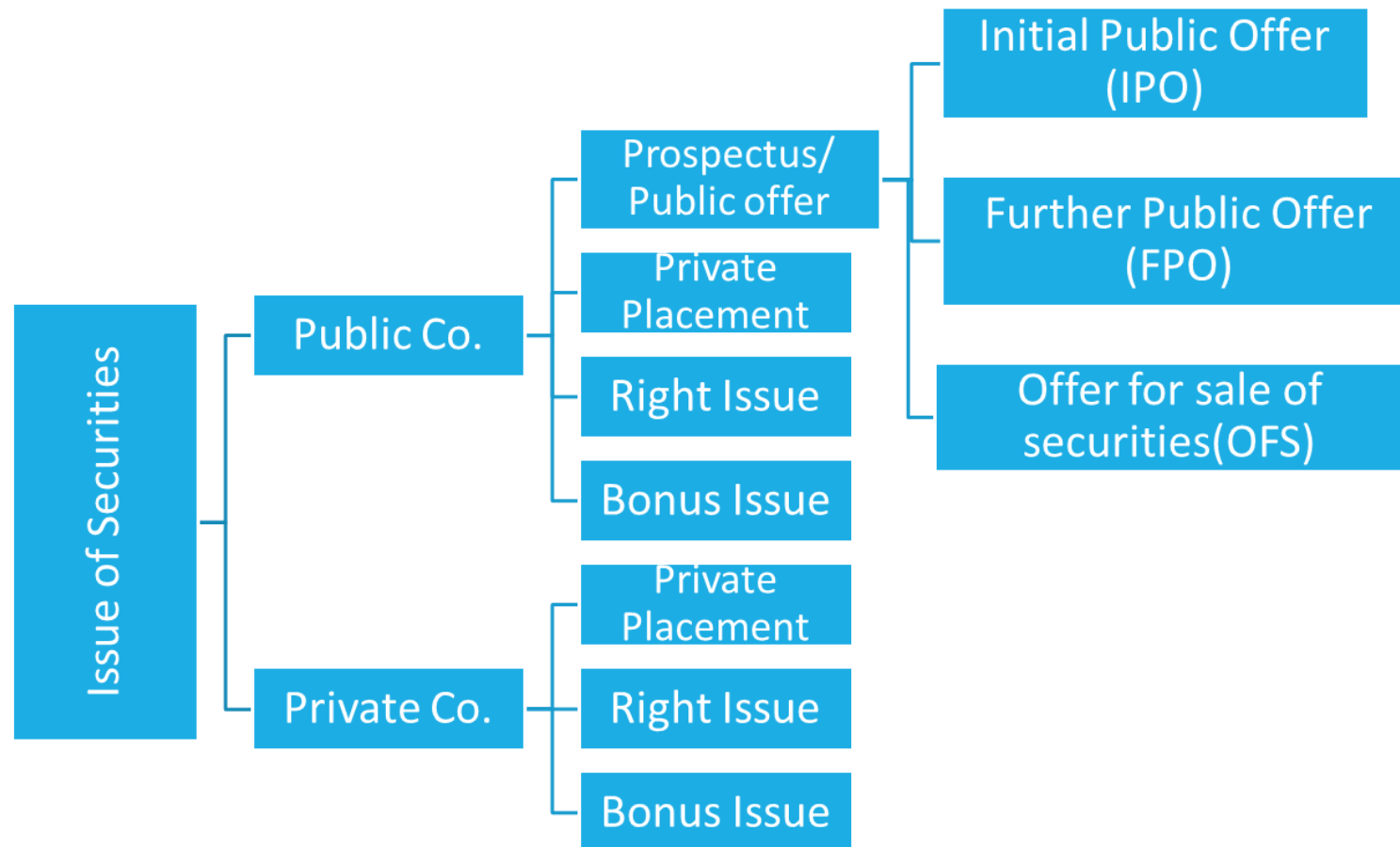


Note: Section 24, 30, 33, 38 and 41 are not applicable for May 2021.





VARIOUS MODES OF ISSUE OF SECURITIES [S.23]





ISSUE OF SECURITIES

As per Section 23 (1), a public company may issue securities—

(a) to public through prospectus (herein referred to as “public offer”) by complying with the provisions of Part I [S. 23 to 41]; 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 the 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 (SEBI) and the rules and regulations made thereunder.



ISSUE OF SECURITIES

As per **Section 23(2)**, a **private company** may issue securities—

(a) by way of **rights issue or bonus issue** in accordance with the provisions of the Act; or

(b) through **private placement** by complying with the provisions of Part II.

By way of *Explanation* it is provided that, “public offer” includes initial public offer (IPO) or further public offer (FPO) of securities to the public by a company, or an offer for sale of securities (OFS) to the public by an existing shareholder, through issue of a prospectus.



MEANING OF SECURITIES

As per **section 2 (81)**, the term '**securities**' means the securities as defined in section 2 (h) of the Securities Contracts (Regulation) Act, 1956 [SCRA].

The definition given by section 2(h) of SCRA is as under:

“Securities” include—

(i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;





MEANING OF SECURITIES

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(id) units or any other such instrument issued to the investors under any mutual fund scheme. *Explanation:* For the removal of doubts, it is hereby declared that “Securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.



MEANING OF SECURITIES

- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- (ii) Government securities;
- (ia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interests in securities.



RIGHTS ISSUE

- a. 'Right Issue' means offering shares to existing members in proportion to their existing share holding. The basic idea is to raise fresh capital.
- b. Right issue is generally availed by small companies where the power of shareholding retains with the shareholders of company.
- c. It can also be defined as the ***“pre-emptive right”*** that a shareholder has in the Company in preference to an outsider.
- d. Any company can go for right issue be a private company, public, listed or unlisted company.
- e. With the rights the shareholders can purchase new shares at a discount to the market price.



RIGHTS ISSUE

Example: A 1:4 rights issue would mean an existing investor can buy one extra share for every four shares already held. Usually the price at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock, i.e. the shares are offered at a discount.



BONUS ISSUE

Bonus issues are distribution of the company's accumulated earnings, which instead of being given out in the form of dividends is converted into additional or **free shares** to current shareholders in proportion to each one's stake without any additional cost.

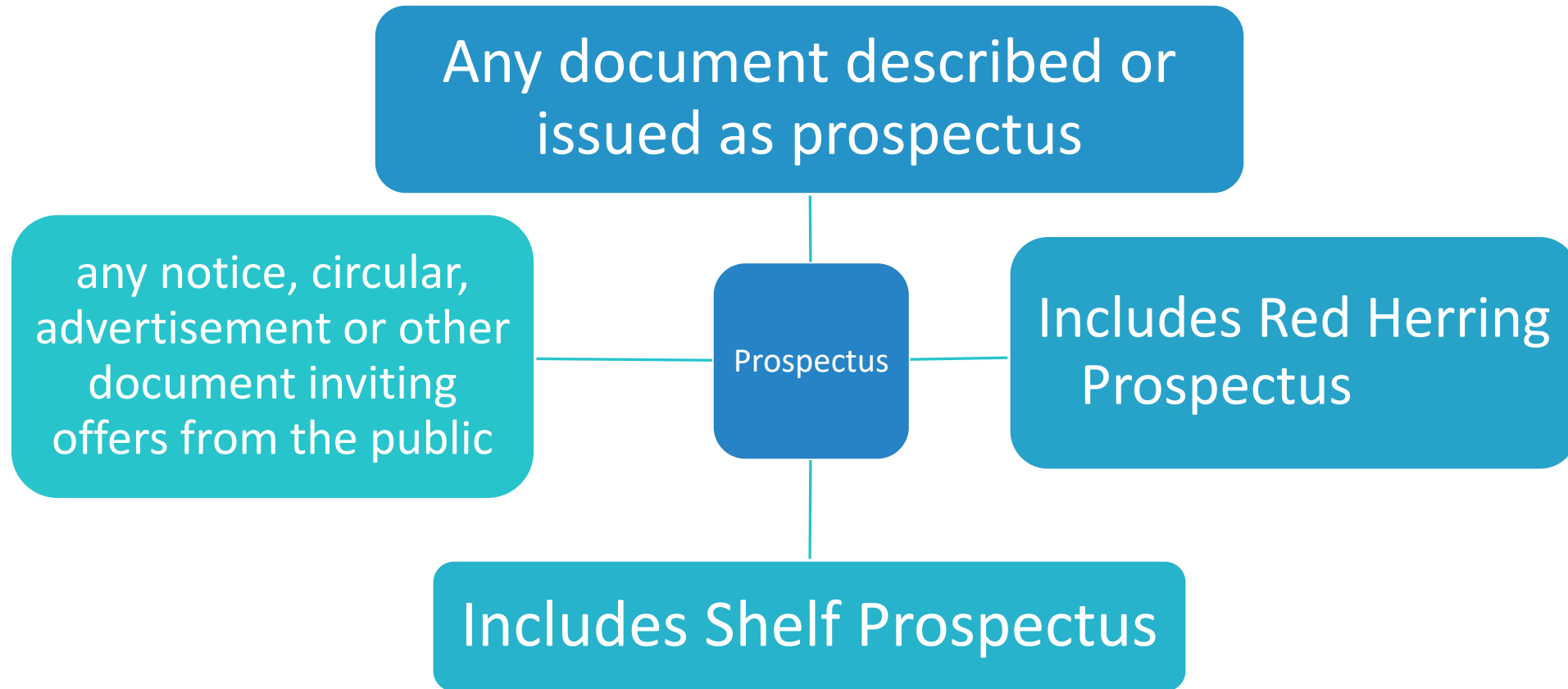
bonus shares are issued by a company when it accumulates a large free cash reserve. It increases the goodwill of shareholders and brand perception.

For Example if investor holds 100 shares of a company and a company declares 2:1 bonus offer, his holding of shares will now be 300 instead of 100.



PROSPECTUS

S.2(70) of the Companies Act 2013, defines the term prospectus:





MATTERS TO BE STATED IN PROSPECTUS [SECTION 26]

Dated (deemed to be the date of publication) **and signed** by every person who is named therein as director or proposed director of the Company or by his duly authorized attorney.

Contain such information and set out such reports on financial information as may be specified by the SEBI in consultation with the Central Government.

Until SEBI specifies the information and reports on financial information, the regulation made by SEBI under SEBI Act 1992, and in respect of such financial information or reports on financial information shall apply.



MATTERS TO BE STATED IN PROSPECTUS [SECTION 26]

Contain declaration about compliance with governing Act and a **statement** to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder

It **shall not include a statement purporting to be made by an expert** unless the expert is a person who is **not**, and has not been, **engaged** or interested in the formation or promotion or management, of the company and 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



WHO IS AN EXPERT?

According to S. 2(38) expert includes

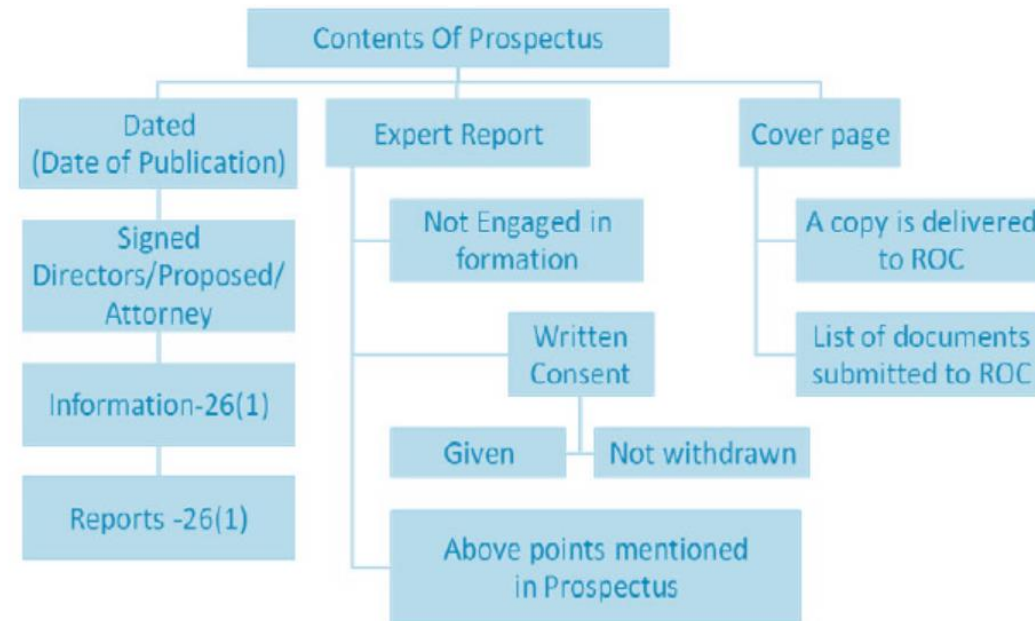
- an engineer,
- a valuer,
- CA,
- a CS,
- a CMA
- and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force



MATTERS TO BE STATED IN PROSPECTUS [SECTION 26]

The cover page of every prospectus shall contain

- Confirmation that a copy has been delivered to ROC
- List of documents submitted to the ROC along with prospectus





MATTERS TO BE STATED IN PROSPECTUS [SECTION 26]

Registered: No prospectus shall be issued by or on behalf of the company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the registrar, for registration, a copy of the **prospectus signed by every person who is named therein a director, proposed director, or by his duly authorized attorney**

The registrar shall not register a prospectus unless the requirements with respect to registration are complied with and the prospectus is accompanied with consent in writing of all the person named in prospectus.

Issued: The prospectus must be **issued to public within 90 days of registration with ROC**. Any issue of securities under the prospectus which is issued beyond 90 days shall be deemed to be an issue without a prospectus.



MATTERS TO BE STATED IN PROSPECTUS [SECTION 26]

Note: With the deletion of Rules 3, 4, 5 and 6 of the *Companies (Prospectus and Allotment of Securities) Rules, 2014*, substantial disclosure requirements, being duplicate in nature, have been dispensed with. Henceforth, a company needs to follow applicable SEBI Regulations till SEBI specifies the information and reports on financial information to be stated in a prospectus under sub-section (1).



NON APPLICABILITY OF SECTION 26(1)

The provisions of section 26(1) shall not apply in following cases:

1. where a **prospectus** or form of application relating to shares or debentures is **issued to the existing members or debenture holder** of a company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or
2. Where a **prospectus** or form of application relating to shares or debentures is issued , which are in all respects **uniform with shares or debentures previously issued** and for the time being dealt in or quoted on a recognised stock exchange

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WHEN PROSPECTUS NEED NOT BE ISSUED?

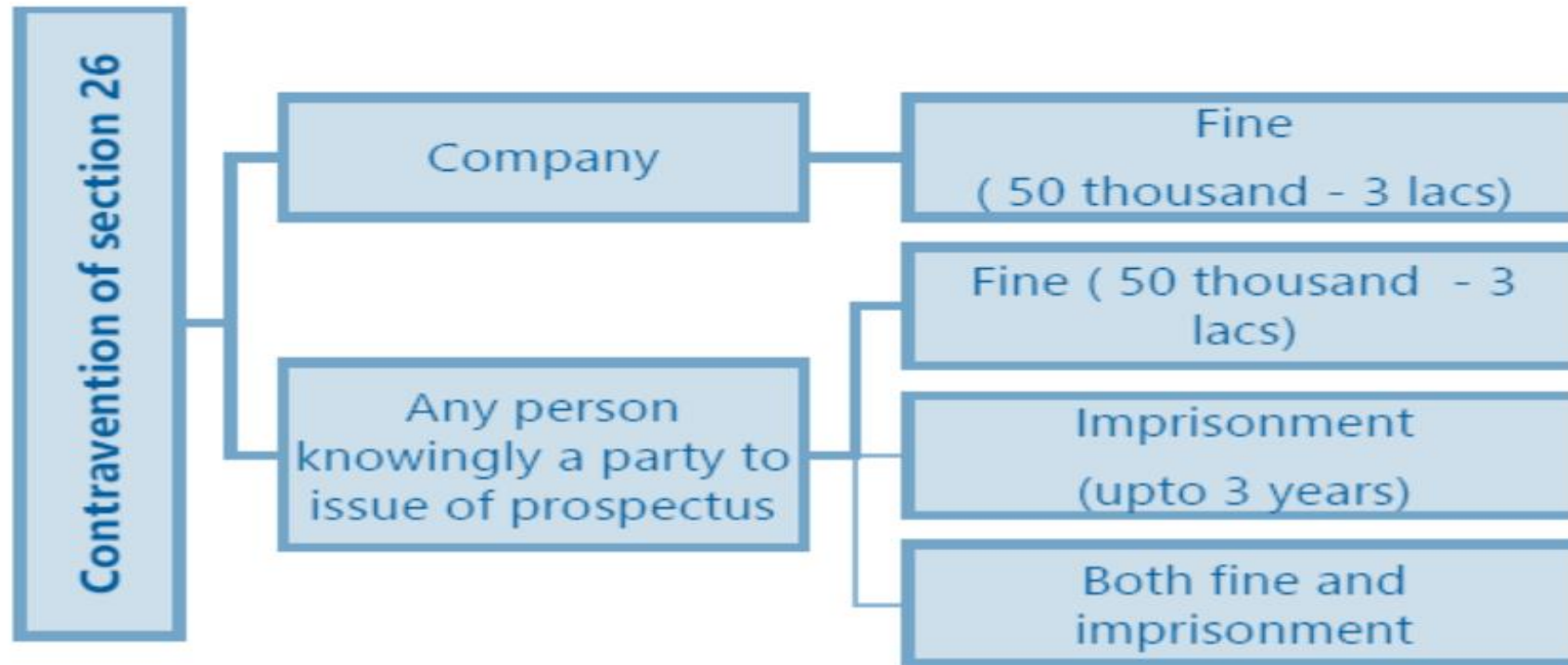
Where a person is a bonafide invitee to enter into an **underwriting agreement** with regard to any securities.

Where securities are offered through **private placement** by complying with the provisions related thereto in the Companies Act, 2013.

Where securities are issued through a **rights issue or a bonus issue** in accordance with the applicable provisions of the Act and in case of listed companies also in accordance with the provisions of the rules and regulations made by SEBI in this behalf



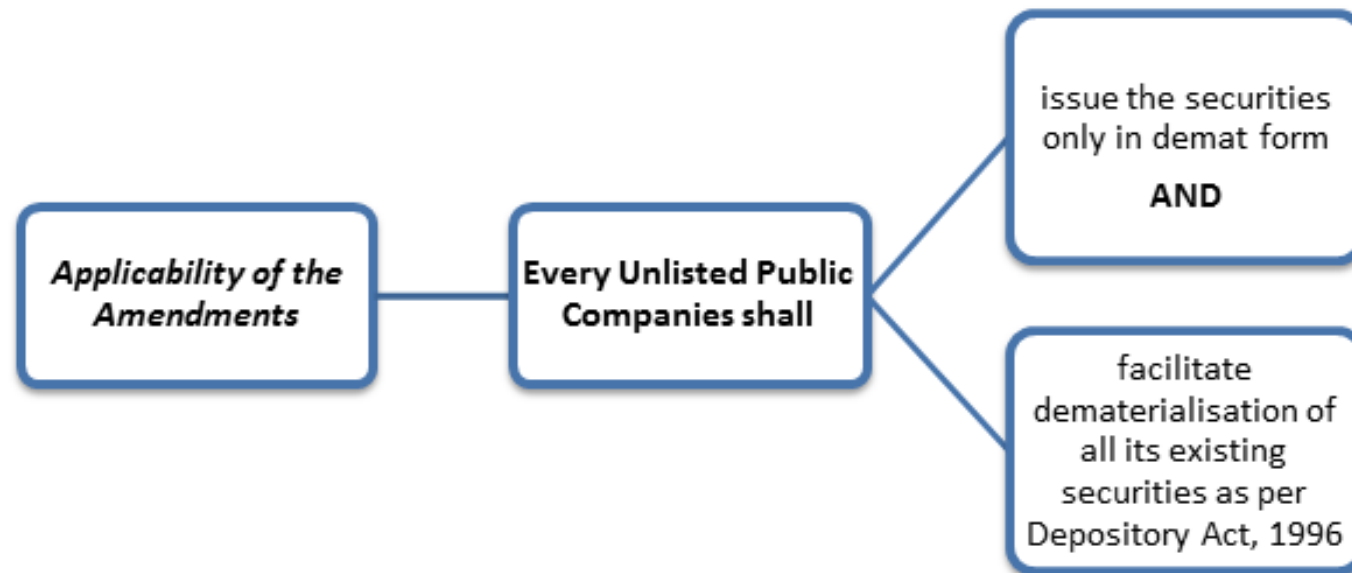
PUNISHMENT FOR CONTRAVENTION OF S.26





PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Dematerialization is the process of converting Physical Securities into electronic format. Section 29 along with Companies (Prospectus and Allotment of Securities) Rules, 2014 [PAS Rules] contain provisions which require public offer of securities to be in dematerialised form.





PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Issue of securities by public company

Section 29(1) states that **every company making public offer and such other class or classes of 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.

Section 29(2) states that 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.

As per **Rule 9 of PAS Rules**, the **promoters of every public company making a public offer of any convertible securities** may hold such securities only in dematerialised form.



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

It is provided that the **entire holding of convertible securities** of the company held by the promoters in physical form up to the date of the initial public offer (IPO) shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialised form only.

Issue of securities in dematerialised form by unlisted public companies:

- According to section 29(1A) read with Rule 9A (1) of PAS, every unlisted public company (excluding a Nidhi, a Government company and a wholly owned subsidiary) **shall issue the securities only in dematerialised form** and also facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

- Rule 9A (2) states **that every unlisted public company** making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer **shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made there under.**
- **Application to the depository:** As per Rule 9A (4), **every unlisted public company shall facilitate dematerialisation of all its existing securities** by making necessary application to a depository as defined in section 2 (1) (e) of the Depositories Act, 1996 and **shall secure International Security Identification Number (ISIN) for each type** of security and shall inform all its existing security holders about such facility.



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Responsibility of every holder of securities of an unlisted public company: According to Rule 9A (3), every holder of securities of an unlisted public company:

- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018

shall ensure that all his existing securities are held in dematerialized form before such subscription.



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Obligations of every unlisted public company: According to Rule 9A (5), every unlisted public company shall ensure that –

- (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
- (b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and
- (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Prohibition on defaulting unlisted public company: Rule 9A (6) states that no unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made

Application of certain provisions: According to Rule 9A (7), except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.



PUBLIC OFFER OF SCEURTIES TO BE IN DEMATERIALISED FORM

Filing with the Registrar: Rules 9A (8) prescribes that every unlisted public company governed by Rule 9A shall submit Form PAS-6 to the Registrar with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within 60 days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

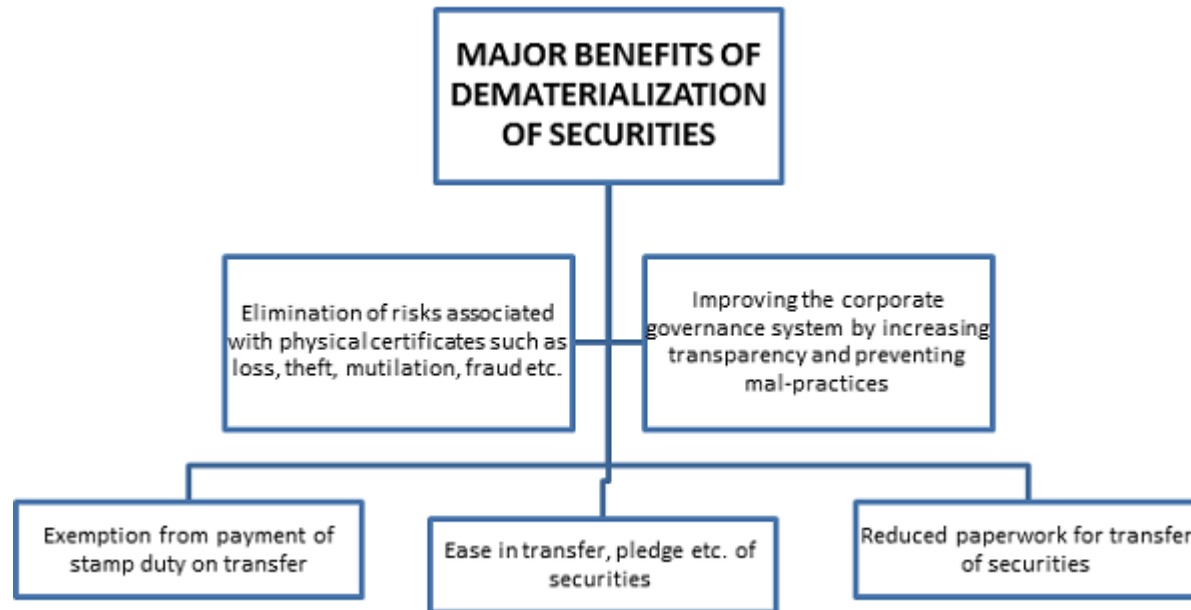
Reporting of difference: As per Rule 9A (8A), the company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

Grievances redressal mechanism: According to Rule 9A (9), the grievances, if any, of security holders of unlisted public companies under Rule 9A shall be filed before the Investor Education and Protection Fund Authority (IEPF).



PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALISED FORM

Initiation of action by IEPF Authority: Rule 9A (10) states that the Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.





ADVERTISEMENT OF PROSPECTUS

Section 30 of the Companies Act 2013 contains the provisions regarding the advertisement of the prospectus. This section states that when in any manner the advertisement of a prospectus is published, it is mandatory to specify the contents of the memorandum of the company regarding

- the object,
- member's liabilities,
- amount of the company's share capital,
- signatories
- and the number of shares subscribed by them and
- the capital structure of the company



VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

Section 27 contains provisions relating to variation in terms of contract or objects in prospectus.

Section 27 states as under:

*(1) 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:***

*Provided that the details, as may be prescribed, of **the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:***



VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

(2) 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.





VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

In respect of variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued, *Rule 7 of the Companies (Prospectus and allotment of Securities) Rules, 2014, states as under:*

Special Resolution to be passed through Postal Ballot and Contents of Notice: According to Sub-rule (1), where 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:—



VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

- (a) the original purpose or object of the Issue;
- (b) the total money raised;
- (c) the money utilised for the objects of the company stated in the prospectus;
- (d) the extent of achievement of proposed objects (that is fifty percent, sixty percent, etc.);
- (e) the unutilised amount out of the money so raised through prospectus,
- (f) the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;



VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

- (g) the reason and justification for seeking variation;
- (h) the proposed time limit within which the proposed varied objects would be achieved;
- (i) the clause-wise details as specified in sub-rule (3) of rule 3 as was required with respect to the originally proposed objects of the issue;
- (j) the risk factors pertaining to the new objects; and
- (k) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.



VARIATION IN TERMS OF CONTRACT OR OBJECT IN PROSPECTUS

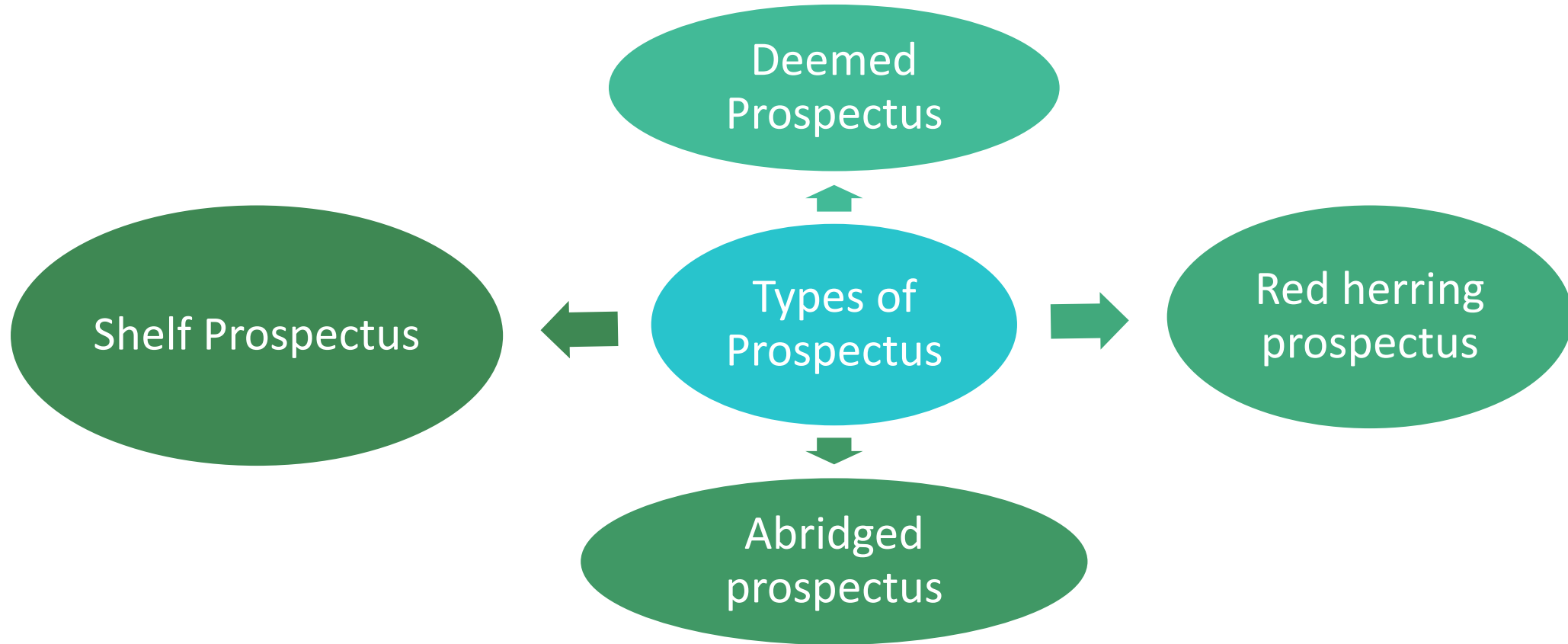
Advertisement to be in Specified Form: According to Sub-rule (2), the advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, **shall be in Form PAS-1** and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

Placing of Notice on Web-site: According to Sub-rule (3), the notice shall also be placed on the web-site of the company, if any.

(2) Exit offer to dissenting shareholders: 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. [Sub-section (2)]



TYPES OF PROSPECTUS





DEEMED PROSPECTUS

According to Section 25 where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, 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 mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, 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, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof. [Sub-section (1)]



DEEMED PROSPECTUS

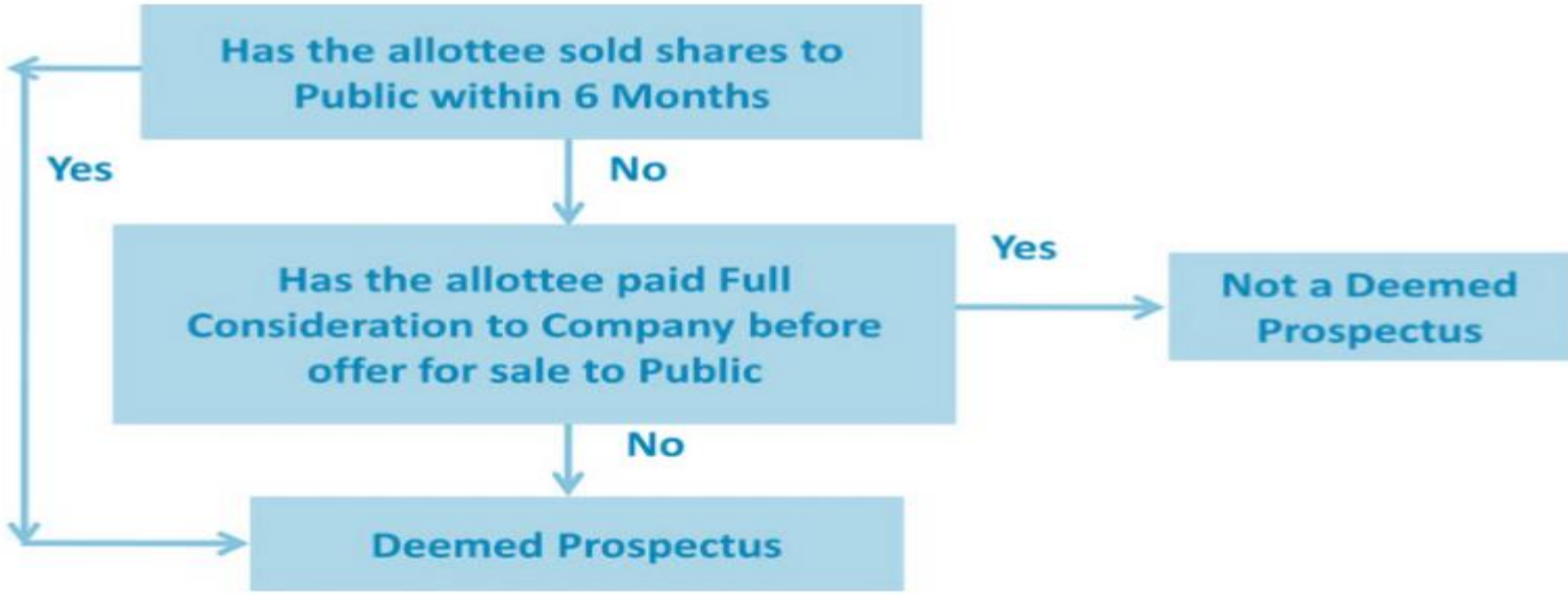
(2) Securities offered for sale to the public: For the purposes of the Companies Act, 2013, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

*(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.
[Sub-section (2)]*



DEEMED PROSPECTUS [SECTION 25]





DEEMED PROSPECTUS [SECTION 25]

Effect of deemed Prospectus:

- all enactments and rules of law as to the contents of prospectus shall apply.
- all enactments and rules of law as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply
- It shall be deemed that the persons by whom the offer to the public is made were named in the prospectus as the directors of the Company.
- Thus, there is no dilution of liability for the persons making the offer which is in addition to liability of the company whose securities are offered for sale



DEEMED PROSPECTUS [SECTION 25]

Contents of deemed Prospectus

- a. Content specified in s.26
- b. the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
- c. the time and place at which the contract where under the said securities have been or are to be allotted may be inspected

Signing of deemed Prospectus: if the offer for sale to the public is made by a company or a firm

- Company- 2 directors
- Firm- at least one half of the partners of the firms



SHELF PROSPECTUS [Section 31]

“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. The only caveat is to supplement the shelf prospectus by an “information memorandum” containing key updates or changes

Max Validity of a shelf prospectus is -1 year



SHELF PROSPECTUS [Section 31]

Filing of shelf prospectus with registrar: According to section 31, **any class or classes of companies**, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of

- (i) 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 that prospectus, and
- (ii) 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.



SHELF PROSPECTUS [Section 31]

Filing of information memorandum with the shelf prospectus: 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 of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.



SHELF PROSPECTUS [Section 31]

It is provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof. [Sub-section (2) and Proviso]

According to Rule 10 of the Companies (Prospectus and Allotment of securities) Rules, 2014, 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.*

Memorandum together with the shelf prospectus shall be deemed to be a prospectus: Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus



RED HERRING PROSPECTUS[S. 32]

It is a prospectus which **does not include complete particulars** of the quantum or price of the securities included therein.

A company proposing to make an offer of securities may issue a red herring prospectus **prior to the issue of a prospectus.**

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.

A red herring prospectus shall carry the **same obligations as are applicable to a prospectus** and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus



RED HERRING PROSPECTUS[S. 32]

Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.



ABRIDGED PROSPECTUS

The term **'Abridged Prospectus'** has been defined by **Section 2 (1)**.

According to it, '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. In fact, 'Abridged Prospectus' is a summarised form of actual prospectus.

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.

Nothing aforesaid shall apply if it is shown that the form of application was issued— (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or (b) in relation to securities which were not offered to the public.

The penal provisions provide that a company which makes any default in complying with the provisions shall be liable to a penalty of fifty thousand rupees for each default



OFFER FOR SALE [SECTION 28]

Section 28 contains the provisions which regulate the offer for sale of securities by certain members of company. These provisions are stated as under:

(1) Offering of shares to public by certain members permitted: Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed. [Sub-section (1)].

(2) Document offering sale to public is deemed to be a prospectus: 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 mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company. [Sub-section (2)]



OFFER FOR SALE [SECTION 28]

(3) Collective Authorisation and reimbursement of expenses to company: 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 shares are 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. [Sub-section (3)].

As regards offer of sale of shares by certain members of the company Rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, contains guiding provisions which are stated as under:



OFFER FOR SALE [SECTION 28]

Exceptions to certain Matters: According to Rule 8 (1), the provisions of Part I of Chapter III namely “Prospectus and Allotment of Securities” and rules made thereunder shall be applicable to an offer of sale referred to 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
- (d) any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.



OFFER FOR SALE [SECTION 28]

Disclosure: As per Rules 8 (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.



CRIMINAL LIABILITY FOR MISSTATEMENT IN PROSPECTUS[SECTION 34]

Section 34 fastens criminal liability for mis-statements in prospectus.

Where a prospectus, issued, circulated or distributed, includes any **statement which is untrue or misleading, every person who has authorised the issue of such prospectus** shall be held **guilty for fraud** involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower punishable with imprisonment and fine under section 447.



CRIMINAL LIABILITY FOR MISSTATEMENT IN PROSPECTUS[SECTION 34]

Section 447 provides the penalty for fraud

- imprisonment 6 months to 10 years (Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years) and
- fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.
- Where the fraud involves an amount less than 10 lakh rupees or 1% of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with Imprisonment: Upto 5 years Or Fine: Upto 20 lakh rupees Or Both

Defense: nothing in this section shall apply to a person if he proves 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.



CIVIL LIABILITY FOR MIS STATEMENT IN PROSPECTUS[SECTION 35]

Section 35 makes the following persons liable to pay compensation for loss or damage sustained by reason of mis-statement/untrue statement or inclusion or omission of any matter in the prospectus:-

- 1. Every person who is a director of the company at the time of issue of prospectus;
- 2. Every person who has authorized himself to be named and is named in the prospectus as a director [proposed directors];
- 3. Every person who is a promoter of the company;
- 4. Every person who has authorized the issue of the prospectus; and
- 5. Every person who is named in the prospectus as an expert.



CIVIL LIABILITY FOR MIS STATEMENT IN PROSPECTUS[SECTION 35]

Exemptions from the liability: No person shall be liable for the mis-statement, where such person proves that—

- **1. Withdrawn his consent before the issue of prospectus-** Where a person having consented to become a director of the company, withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- **2. Prospectus issued without his knowledge/ consent-** Where the prospectus was issued without the knowledge or consent of a person, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge



CIVIL LIABILITY FOR MIS STATEMENT IN PROSPECTUS[SECTION 35]

3. As regards **every misleading statement** purported to be made **by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert**, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment there under

CIVIL LIABILITY FOR MIS STATEMENT IN PROSPECTUS[SECTION 35]

Liability on defraud: Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, **every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus**



THANK YOU