**Prospectus**

**Meaning**

The Companies Act, 2013 defines a prospectus under [***section 2(70***](http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17381)). Prospectus can be defined as “any document which is described or issued as a prospectus”. This also includes any notice, circular, advertisement or any other document acting as an invitation to offers from the public. Such an invitation to offer should be for the purchase of any securities of a corporate body. Shelf prospectus and red herring prospectus are also considered as a prospectus.

# **Essentials for a document to be called as a prospectus**

For any document to considered as a prospectus, it should satisfy two conditions.

1. The document should invite the subscription to public share or debentures, or it should invite deposits.
2. Such an invitation should be made to the public.
3. The invitation should be made by the company or on the behalf company.
4. The invitation should relate to shares, debentures or such other instruments.

# **Statement in lieu of prospectus**

Every public company either issue a prospectus or file a statement in lieu of prospectus. This is not mandatory for a private company. But when a private company converts from private to public company, it must have to either file a prospectus if earlier issued or it has to file a statement in lieu of prospectus.

The provisions regarding the statement in lieu of prospectus have been stated under [***section 70***](https://indiankanoon.org/doc/854694/) of the Companies Act 2013.

# **Advertisement of prospectus**

[***Section 30***](http://corporatelawreporter.com/companies_act/section-30-of-companies-act-2013-advertisement-of-prospectus/) 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. Types of the prospectus as follows.

* Red Herring Prospectus
* Shelf Prospectus
* Abridged prospectus
* Deemed Prospectus

## **Shelf Prospectus**

Shelf prospectus can be defined as a prospectus that has been issued by any public financial institution, company or bank for one or more issues of securities or class of securities as mentioned in the prospectus. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus.

The provisions related to shelf prospectus has been discussed under [***section 31***](https://www.corporate-cases.com/2012/07/information-memorandum.html)***of the Companies Act, 2013.***

The regulations are to be provided by the Securities and Exchange Board of India for any class or classes of companies that may file a shelf prospectus at the stage of the first offer of securities to the registrar.

The prospectus shall prescribe the validity period of the prospectus and it should be not be exceeding one year. This period commences from the opening date of the first offer of the securities. For any second or further offer, no separate prospectus is required.

While filing for a shelf prospectus, a company is required to file an information memorandum along with it.

## **Red herring prospectus**

Red herring prospectus is the prospectus which lacks the complete particulars about the quantum of the price of the securities. A company may issue a red herring prospectus **prior to the issue of prospectus** when it is proposing to make an offer of securities.

This type of prospectus needs to be filed with the registrar at least three days prior to the opening of the subscription list or the offer. The obligations carried by a red herring prospectus are same as a prospectus. If there is any variation between a red herring prospectus and a prospectus then it should be highlighted in the prospectus as variations.

When the offer of securities closes then the prospectus has to state the total capital raised either raised by the way of debt or share capital. It also has to state the closing price of the securities. Any other details which have not been included in the prospectus need to be registered with the registrar and SEBI.

The applicant or subscriber has right under [***Section60B(7)***](http://www.mca.gov.in/Ministry/actsbills/rules/CCGGRaF1956.pdf) to withdraw the application on any intimation of variation within 7 days of such intimation and the withdrawal should be communicated in writing.

## **Abridged Prospectus**

The abridged prospectus is a summary of a prospectus filed before the registrar. It contains all the features of a prospectus. An abridged prospectus contains all the information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in short.

[***Section33(1)***](http://corporatelawreporter.com/companies_act/section-33-of-companies-act-2013-issue-of-application-forms-for-securities/) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.

It contains all the useful and materialistic information so that the investor can take a rational decision and it also reduces the cost of public issue of the capital as it is a short form of a prospectus.

## **Deemed Prospectus**

A deemed prospectus has been stated under [***section 25(1) of the Companies Act, 2013***.](http://corporatelawreporter.com/companies_act/section-25-of-companies-act-2013-document-containing-offer-of-securities-for-sale-to-be-deemed-prospectus/)

When any company to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale. The document is deemed to be a prospectus of a company for all purposes and all the provision of content and liabilities of a prospectus will be applied upon it.

In the case of [***SEBI v. Kunnamkulam Paper Mills Ltd.***](https://indiankanoon.org/doc/1936089/), it was held by the court that where a rights issue is made to the existing members with a right to renounce in the favour of others, it becomes a deemed prospectus if the number of such others exceeds fifty.

# **Process for filing and issuing a prospectus**

## **Application forms**

As stated under**section 33,** the application form for the securities is issued only when they are accompanied by a memorandum with all the features of prospectus referred to as an abridged prospectus.

**The exceptions to this rule are:**

* When an application form is issued as an invitation to a person to enter into underwriting agreement regarding securities.
* Application issued for the securities not offered to the public.

## **Contents**

For filing and issuing the prospectus of a public company, it must be signed and dated and contain all the necessary information as stated under [***section 26 of the Companies Act,2013***](http://corporatelawreporter.com/companies_act/section-26-of-companies-act-2013-matters-to-be-stated-in-prospectus/):

1. Name and registered address of the office, its secretary, auditor, legal advisor, bankers, trustees, etc.
2. Date of the opening and closing of the issue.
3. Statements of the Board of Directors about separate bank accounts where receipts of issues are to be kept.
4. Statement of the Board of Directors about the details of utilization and non-utilisation of receipts of previous issues.
5. Consent of the directors, auditors, bankers to the issue, expert opinions.
6. Authority for the issue and details of the resolution passed for it.
7. Procedure and time scheduled for the allotment and issue of securities.
8. The capital structure of the in the manner which may be prescribed.
9. The objective of a public offer.
10. The objective of the business and its location.
11. Particulars related to risk factors of the specific project, gestation period of the project, any pending legal action and other important details related to the project.
12. Minimum subscription and what amount is payable on the premium.
13. Details of directors, their remuneration and extent of their interest in the company.
14. Reports for the purpose of financial information such as auditor’s report, report of profit and loss of the five financial years, business and transaction reports, statement of compliance with the provisions of the Act and any other report.

## **Filing of copy with the registrar**

As stated under ***sub-section 4 of***[***section26***](http://corporatelawreporter.com/companies_act/section-26-of-companies-act-2013-matters-to-be-stated-in-prospectus/)***of the Companies Act, 2013***, the prospectus is not to be issued by a company or on its behalf unless on or before the date of publication, a copy of the prospectus is delivered to the registrar for registration.

The copy should be signed by every person whose name has been mentioned in the prospectus as a director or proposed director or the assigned attorney on his behalf.

## **Delivery of copy of the prospectus to the registrar**

As per [***section26(6***](http://corporatelawreporter.com/companies_act/section-26-of-companies-act-2013-matters-to-be-stated-in-prospectus/)***) of the Companies Act 2013***, the prospectus should mention that its copy has been delivered to the registrar on its face. The statement should also mention the document submitted to the registrar along with the copy of the prospectus.

## **Registration of prospectus**

[***Section26(7)***](http://corporatelawreporter.com/companies_act/section-26-of-companies-act-2013-matters-to-be-stated-in-prospectus/) states about the registration of a prospectus by the registrar. **According to this section, when the registrar can register a prospectus when:**

1. It fulfils the requirements of this section, i.e., section 26 of the Companies Act, 2013; and
2. It contains the consent of all the persons named in the prospectus in writing.

## **Issue of prospectus after registration**

If a prospectus is not issued before 90 days from the date from which a copy was delivered before the registrar, then it is considered to be invalid.

Contravention of section

If a prospectus is issued in contravention of the provision under section 26 of the Companies Act 2013, then the company can be punished under [***section 26(9)***](http://corporatelawreporter.com/companies_act/section-26-of-companies-act-2013-matters-to-be-stated-in-prospectus/)***.***The punishment for the contravention is:

* Fine of not less than Rs. 50,000 extending up to 3,00,000.

If any person becomes aware of such prospectus after knowing the fact that such prospectus is being issued in contravention of section 26 then he is punishable with the following penal provisions.

* Imprisonment up to a term of 3 years, or
* Fine of more than Rs. 50,000 not exceeding Rs. 3,00,000