

Chapter - 3 Prospectus and Allotment of Securities

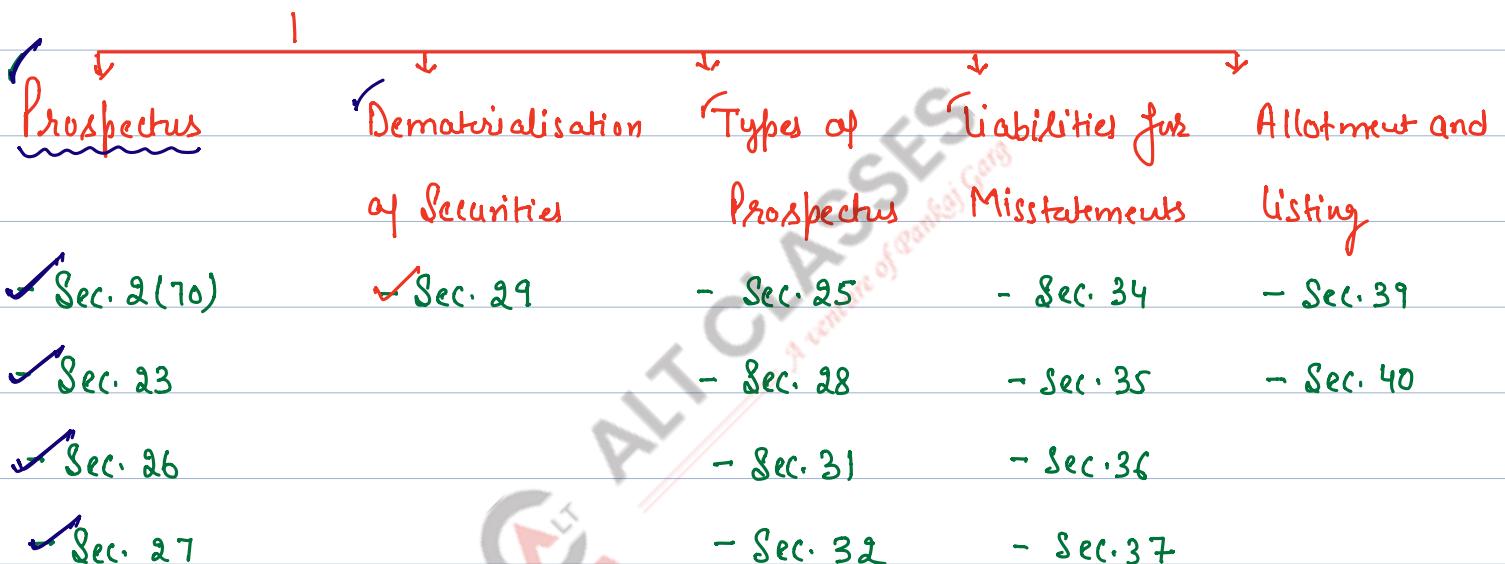
Chapter III of Companies Act, 2013

Part - I
(Sections 23 to 41)

Prospectus and Allotment
of Securities

Part - II (Sec. 42)

Private Placement
(Sec. 42)



I. Prospectus: Meaning and Statutory Provisions (Sec. 23, 26, 27)

(A) Meaning: As per Sec. 2(70), prospectus means

any document described
or issued as prospectus

and includes - Red herring Prospectus

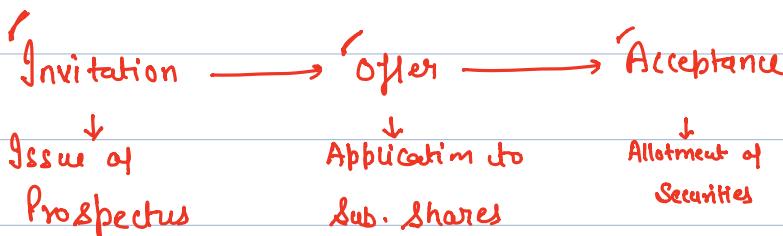
- Shelf Prospectus

- Notice, Circular, advt,

Other document inviting

Offer from public to subscribe

or purchase of any securities.



(B) Statutory Provisions! (Sec. 23, 26 and 27)

Sec. 23: Public Offer and Private Placement:

Manner for Issue of Securities

Public Companies

Private Companies

- Public Issue through Prospectus (I Po/F Po)
- Private Placement (Sec. 42)
- Right Issue (Sec. 62)
- Bonus Issue (Sec. 63)

- Private Placement (Sec. 42)
- Right Issue (Sec. 62)
- Bonus Issue (Sec. 63)

Sec. 26: Matters to be stated in Prospectus:

(i) Every prospectus shall be dated and signed.
(date of its publication)

(ii) Prospectus shall state such information and set out such reports on financial information as specified by SEBI in consultation with C.GI.

Until SEBI specifies such information, provisions as covered under the SEBI Regulations shall apply.

(iii) Prospectus shall make a declaration about the compliance.

(iv) Prospectus shall not be required in following cases:

(a) Issue of shares by a private company

(b) " .. " or deb" by a public company through private placement.

(c) Bonafide invitation to a person under underwriting agreement.

(v) A signed copy of prospectus shall be delivered to Registrar for filing, on or before date of publication.

(vi) Prospectus shall not be valid if it is issued more than 90 days after its delivery to Registrar.

Sec. 26(5): Statement by Experts:

Expert statement can be included in prospectus, if

- (a) he is not engaged or interested in promotion, formation or management of the company.
- (b) he has given written consent to issue of prospectus and has not withdrawn such consent before delivery of a copy of prospectus with the Registrar.
- (c) a statement to that effect is included in the prospectus

Sec. 26(9): Penalty for contravention of Sec. 26:

Company

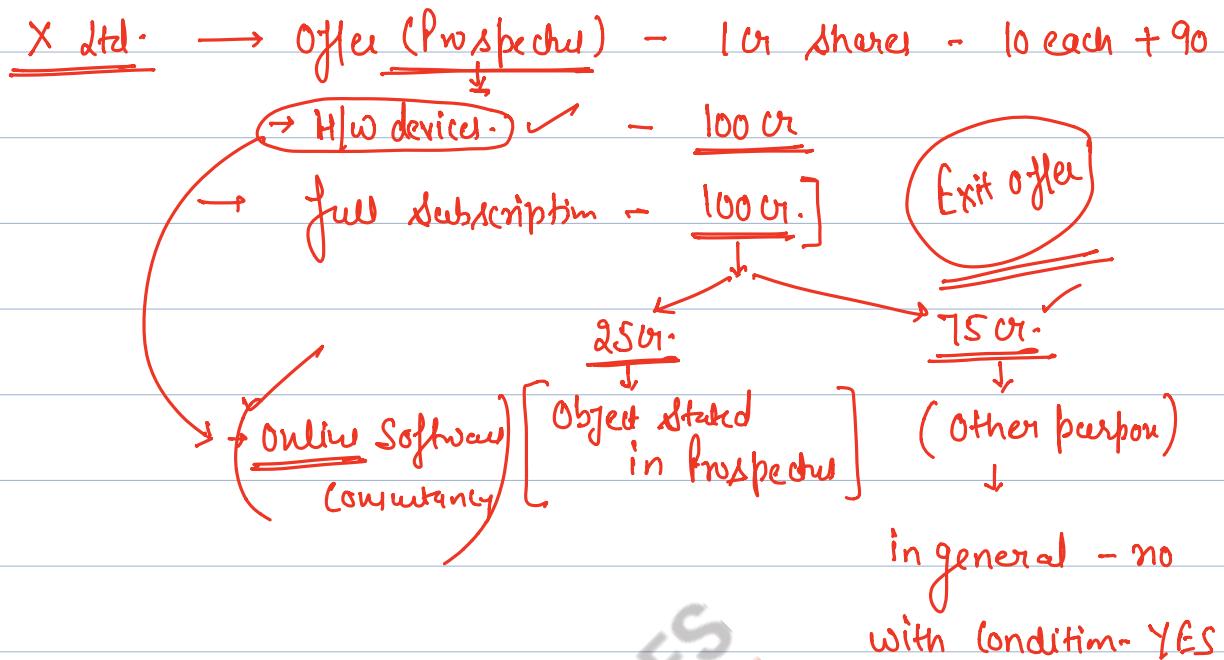
and

Person knowingly a party to the issue of prospectus

Fine ₹ 50,000 to ₹ 36c

₹ 50000 to ₹ 36c

Sec. 27 : Variation in Terms of the Contract or Object in Prospectus:
(Read with Rule 7 of Companies (PAs) Rules, 2014)



- (i) Terms of the contracts referred to in the Prospectus can be varied by way of Special Resolution through Postal Ballot.
- (ii) Details of such notice of such resolution shall be published in two newspapers.
- (iii) Advertisement of notice shall in form No PAS-1
- (iv) Notice shall also be placed on Website of Company.
- (v) Company shall not use the amount raised through prospectus for buying, trading or otherwise dealing in equity shares of other listed Companies.
- (vi) Dissenting shareholders shall be given an Exit offer by promoters or controlling shareholders at such exit price and in such manner as specified by SEBI.

II . Dematerialisation of Securities : Sec. 29 along with Rule 9A of
(Reading from Notes) Companies (PAs) Rules, 2014

Unlisted Public Companies

'On or after 02.10.2018'

Company



Existing security holder



→ Shall facilitate the dematerialisation.

→ Cannot deliver securities in physical form.

→ " apply to depository

→ Cannot apply for securities

→ " ensure timely payment of fees

offered by Co. / buyback of securities | bonus Issue | Right Issue.

- " " security deposits

- " " inform security holder

- " not issue any security / buy back /

Bonus Issue | Right Issue

H.W.: Write short note on :

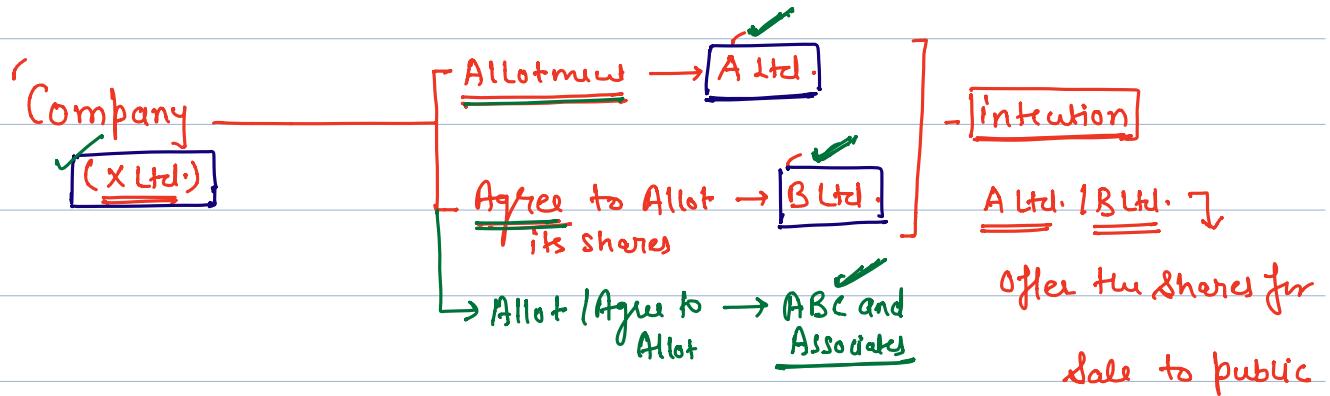
(a) Conditions to be fulfilled for including Expert's Statement in the Prospectus. (3 Marks)

(b) Cases in which Prospectus is not required to be issued. (3 Marks)



III. Types of Prospectus: [Sec. 25, 28, 31 and 32]

(A) Deemed Prospectus: Sec. 25



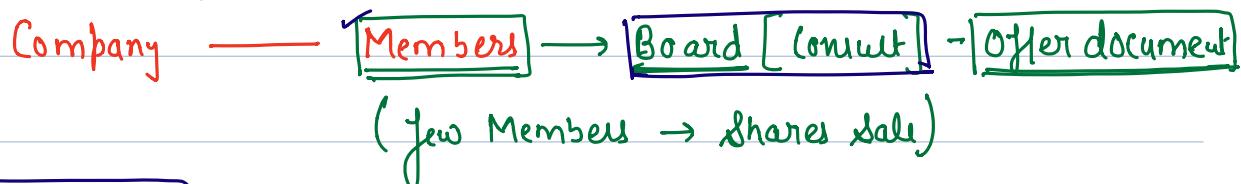
Where a Company allots or agree to allot any securities

with a view that all or any of those securities
being offered for sale to public

↓

Any document by which the offer for sale to the public is made,
shall be deemed to be a prospectus issued by the company.

✓(B) Offer document for sale of shares by members: Sec. 28

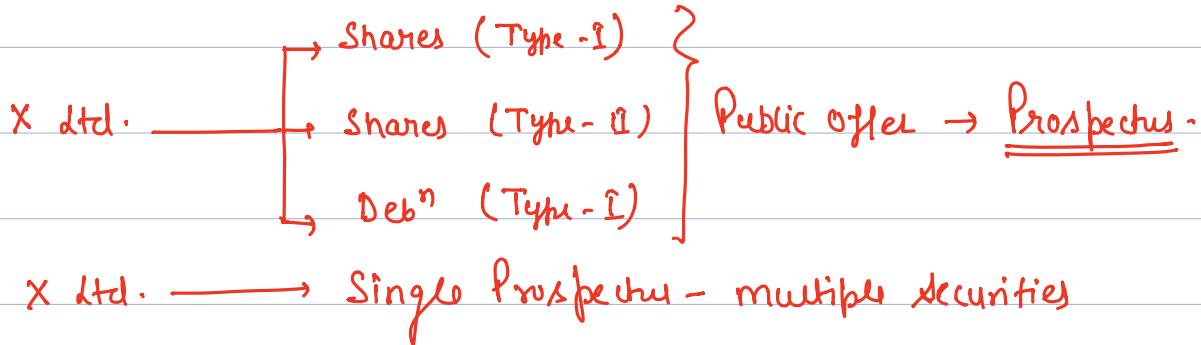


Any document by which the offer of sale to the public
is made by certain members of the company,

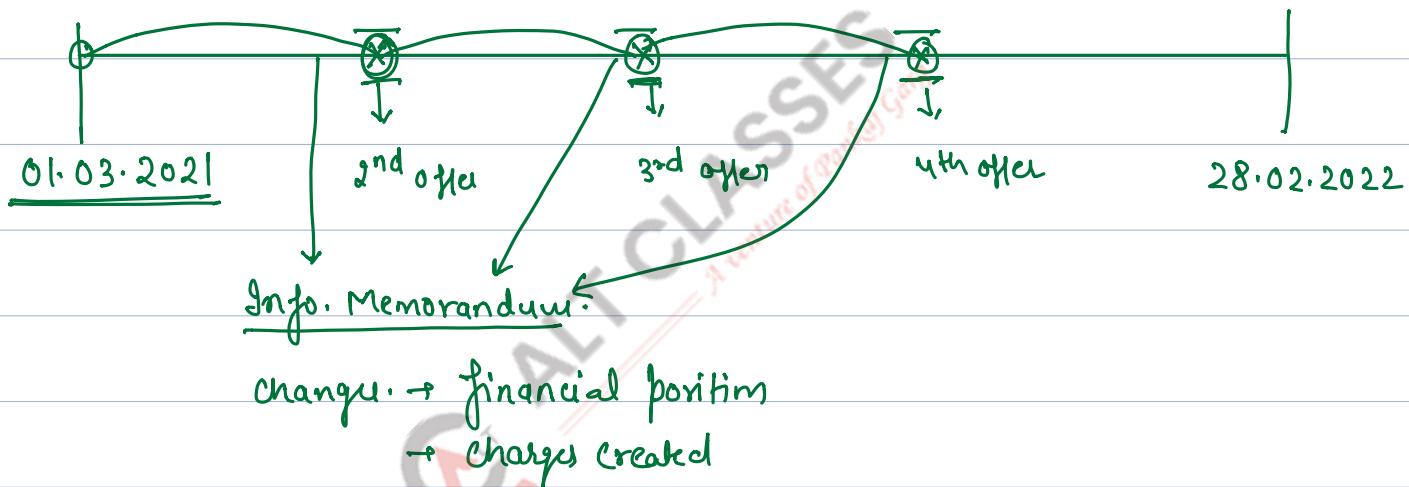
↓

be deemed to be a prospectus issued by the company.

(C) Shelf Prospectus: Sec. 31



X Ltd. → Shelf Prospectus → Validity 1 year from the date
(Securities) of first offer made under this prospectus.



Meaning: A prospectus in respect of which the securities or class of securities specified therein are issued for subscription in one or more issues over a certain period without issue of further prospectus.

Statutory Requirements:

- (i) Any class or classes of company, as specified by SEBI, may file a shelf prospectus with the Registrar at the time of first offer of securities included therein.

- (ii) Shelf prospectus shall indicate a period not exceeding one year as its validity which shall commence from the date of opening of the first offer of securities under this prospectus.
- (iii) In respect of a 2nd or subsequent offer of such securities issued during the period of validity of shelf prospectus, no further prospectus is required.
- (iv) A company filling shelf prospectus shall be required to file an Information Memorandum containing material facts relating to - New charges created; changes in the financial position as have occurred between the first offer / previous offer and the succeeding offer; with the Registrar prior to issue of 2nd or subsequent offer of securities under shelf prospectus.
- (v) Information memorandum shall be in form PAS-2 and filed with the Registrar within one month prior to issue of 2nd or subsequent offer of securities under the shelf prospectus.

(D) Red herring Prospectus: (sec. 32)

A prospectus which does not include complete particulars of the - quantum ; or - price of the securities included therein is known as red herring prospectus .

- Sec. 25: deemed prospectus: Company → Allottee agrees to Allot.
 ↓
Offer for Sale → Public
 Deemed Prospectus.
 ↘ 1
 ↗ ≤ 6 Months.
 ↗ Consideration not paid fully
- Sec. 28: Offer for Sale: Members [BOD Constitution] → Offer for Sale to Public.
- Sec. 31: Shelf Prospectus → > 1 Security - validity - single prospectus
- Sec. 32: Red herring Prospectus

Home Work: Revision and learning → Sec. 25

" 28

" 31

" 32



~~Imp.~~ IV Liability for Misstatements / Omissions in Prospectus:

✓ (A) Criminal liabilities (fines | Imprisonment)

- Sec. 34

(B) Civil liabilities (Compensation)

- Sec. 35

Where any prospectus is issued /
circulated | distributed

↓
which includes any statement which
is untrue or misleading or any
material fact is omitted

Every person who authorises the
issue of such prospectus shall be
liable u/s 447 (fraud).

Where a person has subscribed for
securities of a company, acting on any
statement included in the prospectus

which is misleading or any material
fact is omitted in the prospectus
↓ and
has sustained any loss or damages

Company and Every person (director,
proposed director, promoter, Experts)
shall be liable to pay
Compensation.

Exception: liability shall not arise if

(a) such statement or omission
was immaterial.

(b) such person had reasonable
grounds to believe and did upto
the time of issue of prospectus
believe that the statement was
true or Omission was necessary.

Exception: liability shall not arise
if the person proves that -

(a) he withdrew his consent before
issuance of prospectus or the prospectus
was issued without his consent.
public
(b) Reasonable Notice was issued that
prospectus was issued without his consent.

(c) Every misleading statement purported to be made by an Expert was a Correct and fair presentation of the statement and he had reasonable grounds to believe and did up to the time of issue of prospectus believe that the person making the statement was competent to make it and consent had been given U/s 26 and not withdrawn before filing of prospectus with the Registrar.

Sec. 447: Punishment for fraud:

Situation - I \rightarrow Amt. of fraud \geq [Lower of 10 Lakh or 1% of T/o]



Imprisonment \rightarrow 6 Months - 10 years

and

Fine \rightarrow Amt. involved - 3 times of
in fraud amt. involved
 in fraud

Situation II
Amt. of fraud < lower of
10 Lakh or
1% of T/o



Imprisonment \rightarrow upto 5 years

[OR]

Fine \rightarrow upto ₹ 50 Lakh.
[OR]

Both .

Example: Turnover : 5 Cr. 1% of T/o = 5 Lakh.

Lower of 10 Lakh or 1% of T/o = 5 Lakh.

Fraud = 6 Lakh → Situation I shall apply

= 4 Lakh. → Situation II shall apply

Turnover = 20 Cr. 1% of T/o = 20 Lakh.

Lower of 10 Lakh or 1% of T/o = 10 Lakh

Fraud = 12 Lakh → Situation I shall apply.

Fraud = 9 Lakh → " II " "

✓ Sec. 37: Action by affected person:

A suit may be filed or any other action may be taken



by any person, group of persons or association of persons.



who have been affected by any misleading statement or
Omission of any material fact.

Ex: X Ltd. → Prospectus (Misleading Info. / Omission of material fact)



Mr. A → Subscribe 1000 shares of Co. based on prospectus.

Mr. B → Acquire 500 shares of Co. from Mr. A

H.W.
MTP - March 18
RTP - May 18

whether Mr. B can take action against the company based on
misleading information in prospectus. → No.

→ DO PRACTICE - Questions on Sec. 34 and 35 —