

# Prospectus – Definition and Contents

## 1. Introduction

- A prospectus is a formal legal document issued by a company to invite the public to subscribe to its shares, debentures, or other securities.
- It plays a key role in the initial offering of securities, especially in public companies, and ensures transparency and disclosure of essential company information to prospective investors.
- The concept is governed under the Companies Act, 2013, particularly Sections 23 to 42.

## 2. Definition of Prospectus

### a) Section 2(70) of the Companies Act, 2013

“Prospectus means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

### b) Judicial Definition

In *Rex v. Kysant* (1932), a prospectus was described as a document “holding out to the public an invitation to buy shares or debentures of a company.”

## 3. Purpose of Issuing a Prospectus

- To invite public investment in a company.
- To disclose material facts about the financial status, management, and business of the company.
- To ensure transparency and investor protection.
- To comply with legal requirements under the Companies Act and SEBI regulations.

## 4. Types of Prospectus

### a) Red Herring Prospectus (Section 32)

- Issued before the price or number of securities is finalized.
- Commonly used in book-building issues.
- Must be filed with the Registrar before the issue opens.

### b) Shelf Prospectus (Section 31)

- Issued by public financial institutions or scheduled banks for multiple issues of securities over a period without needing to issue a fresh prospectus each time.
- Valid for up to one year.

### c) Abridged Prospectus (Section 2(1))

- A shorter version of the full prospectus containing the key information, issued with application forms.

#### **d) Deemed Prospectus (Section 25)**

- If a company allots securities to an intermediary who later sells them to the public, the offer for sale is deemed to be a prospectus issued by the company.

### **5. Contents of a Prospectus (Section 26)**

A prospectus must contain full, true and fair disclosures. Key elements include:

#### **1. General Information**

- Name and address of the company's registered office, company secretary, legal advisors, auditors, etc.
- Date of issue and authorization details.

#### **2. Capital Structure**

- Authorized, issued, subscribed, and paid-up share capital.
- Details of reserves and surplus.

#### **3. Terms of the Issue**

- Type and class of securities being offered.
- Mode of payment and application process.

#### **4. Risk Factors**

- Statement of potential business and financial risks to inform investors.

#### **5. Business Description**

- Nature of the business, location of factories and offices, main products or services.
- Financial performance, marketing, and growth prospects.

#### **6. Management and Promoters**

- Details of directors, promoters, and key managerial personnel.

#### **7. Financial Information**

- Audited financial statements, auditor's report, and key financial ratios.

#### **8. Litigations and Defaults**

- Legal proceedings against the company or directors.

#### **9. Use of Proceeds**

- Clear explanation of how the funds raised will be used.

#### **10. Declaration and Responsibility Statements**

- Statement by directors accepting responsibility for the contents of the prospectus.

### **6. Importance of Prospectus**

- Acts as a statutory notice to the public.
- Serves as evidence of contract between the company and investors.
- Protects investors from fraudulent practices.
- Encourages informed investment decisions.

## **7. Legal Consequences of Misstatement**

### **a) Civil Liability (Section 35)**

- Investors can claim damages or rescind the contract if they suffer loss due to untrue statements.

### **b) Criminal Liability (Section 34)**

- False or misleading statements may result in fine and imprisonment (up to 10 years).

## **8. Landmark Case Law: R. v. Kysant (1932)**

- The prospectus concealed losses while declaring dividends.
- Held: Misstatement by suppression of material facts – promoter held criminally liable.

## **9. Conclusion**

- A prospectus is a crucial disclosure document that ensures transparency between a company and its investors.
- The statutory requirement for full and honest disclosure upholds corporate governance and investor protection.
- Misleading a prospectus may result in severe civil and criminal penalties, reinforcing the need for accuracy and integrity in its issuance.

# **Shelf Prospectus and Red Herring Prospectus**

## **1. Introduction**

Under the Companies Act, 2013, companies issuing securities must comply with detailed disclosure norms to ensure transparency and investor protection. Among the various types of prospectuses recognized under law, Shelf Prospectus and Red Herring Prospectus are two important categories used in different types of public issues.

## **2. Shelf Prospectus (Section 31, Companies Act, 2013)**

### **2.1 Meaning**

A Shelf Prospectus is a prospectus issued by certain classes of companies to raise capital through multiple issues of securities over a period without issuing a fresh prospectus for each offering.

### **2.2 Eligible Companies**

Primarily used by:

- Public financial institutions, or
- Public sector banks, or

- Any class of company notified by SEBI.

### **2.3 Validity Period**

- A shelf prospectus is valid for one year from the date of the first offer of securities.
- During this period, the company can issue multiple tranches of securities under the same prospectus.

### **2.4 Information Memorandum**

- At the time of each subsequent issue, the company must file an Information Memorandum with the Registrar.
- It includes material changes or updates since the last offer.

### **2.5 Advantages**

- Time-saving and cost-effective as there is no need to file a fresh prospectus for each issue.
- Enables flexibility in raising capital in tranches.
- Regulatory compliance remains intact with the filing of Information Memoranda.

## **3. Red Herring Prospectus (Section 32, Companies Act, 2013)**

### **3.1 Meaning**

A Red Herring Prospectus (RHP) is a type of prospectus that does not include complete details of the price or the number of shares being offered at the time of filing.

- Used primarily in book-building issues.

### **3.2 Filing and Use**

- Filed with the Registrar of Companies (ROC) before the issue opens.
- The final prospectus with complete details is filed before allotment.

### **3.3 Contents of Red Herring Prospectus**

- Contains preliminary information about the company's business, financials, risk factors, objects of the issue, etc.
- Omits key pricing details like offer price and share quantity, which are determined during the book-building process.

### **3.4 Role in Book-Building Process**

- Investors bid for shares within a specified price band.
- Final price is discovered based on demand and supply, and allotments are made accordingly.

## **4. Key Differences Between Shelf Prospectus and Red Herring Prospectus**

<b>Basis</b>	<b>Shelf Prospectus</b>	<b>Red Herring Prospectus</b>
Purpose	Multiple issues over time.	Price discovery through book-building process
Used by	Public financial institutions, scheduled banks.	Public companies making IPOs or FPOs

Filing	Once, valid for one year	Filed before issue opens; final prospectus filed later
Price and Quantity.	Fully disclosed at the time of issue	Not disclosed initially; discovered during bidding
Supplement.	Accompanied by Information Memorandum for each tranche	Final prospectus filed after price and quantity are fixed

## 5. Regulatory Framework

- Governed under Sections 31 and 32 of the Companies Act, 2013.
- SEBI (Issue of Capital and Disclosure Requirements) Regulations also apply.

## 6. Legal Significance and Investor Protection

- Both types of prospectuses aim to:
  - Ensure transparency in public offerings.
  - Provide timely and relevant information to investors.
  - Avoid repetition and reduce compliance costs in certain kinds of issues.

## 7. Case Reference

Though case law in this area is limited due to its technical nature, the principles of fair disclosure and investor protection laid down in cases like *Rex v. Kysant* (1932) are relevant in interpreting misleading omissions in any form of prospectus.

## 8. Conclusion

Shelf Prospectus and Red Herring Prospectus are innovations in securities law designed to facilitate efficient capital raising while maintaining the core principle of disclosure-based regulation. Both forms represent the shift towards more flexible and market-friendly mechanisms, balancing corporate ease with investor security.

# Liability for Misstatements in Prospectus

## 1. Introduction

A prospectus is a legal document issued by a company to invite the public to subscribe to its securities. It must contain true, complete, and fair disclosures about the company. If a false or misleading statement is made in the prospectus, the company and responsible persons may incur civil and criminal liability.

## 2. Legal Provision – Sections 34 & 35, Companies Act, 2013

### Section 34: Criminal Liability

Covers criminal liability for untrue or misleading statements in a prospectus.

### Section 35: Civil Liability

Covers civil liability on directors, promoters, and others involved in the issuance of the prospectus.

## 3. Meaning of Misstatement in Prospectus

A misstatement is:

- False or untrue in form or content, or
- Omission of material facts, making the overall statement misleading.

A material fact is one that would influence an investor's decision.

#### **4. Criminal Liability for Misstatement (Section 34)**

Applies when a prospectus contains:

- A false statement, or
- Omission that misleads investors.

##### **4.2 Punishment**

- Imprisonment: Up to 10 years, and
- Fine: At least the amount involved in fraud, which may extend to three times such amount.

##### **4.3 Exception**

The person must prove that the statement was immaterial or that they had reasonable grounds to believe it was true.

#### **5. Civil Liability for Misstatement (Section 35)**

##### **5.1 Who is Liable?**

- Directors at the time of issue,
- Promoters,
- Persons who authorized the issue,
- Experts (like auditors or valuers) if their statements are included.

##### **5.2 Remedies Available**

- Compensation for loss or damage, and
- Right to rescind the contract (return shares and recover the amount paid).

##### **5.3 Defenses Available**

The defendant must prove:

- Withdrawal of consent before issue,
- Lack of knowledge or reasonable belief in the truth of the statement,
- Statement was made by an expert and relied upon in good faith.

#### **6. Remedies for Investors**

Investors misled by a false prospectus can:

1. Claim damages under civil liability (Section 35),
2. Rescind the contract, and return the shares,
3. Initiate criminal proceedings under Section 34,
4. Proceed under common law tort of deceit.

#### **7. Landmark Case Law**

##### **a) R. v. Kysant (1932)**

- Facts: The prospectus concealed that the company had not made trading profits.
- Held: Omission of material facts amounted to misrepresentation. Promoter was held criminally liable.

##### **b) Peek v. Gurney (1873)**

- Facts: A prospectus omitted liabilities of the company.
- Held: Civil liability arose as the omission misled investors.

## **8. Role of SEBI**

- SEBI requires all listed companies to comply with the ICDR (Issue of Capital and Disclosure Requirements) Regulations.
- Misstatement can lead to penalties, suspension of trading, or prosecution.

## **9. Importance of Accurate Prospectus**

A fair and accurate prospectus:

- Builds investor trust,
- Promotes healthy capital markets, and
- Protects investors from fraudulent practices.

## **10. Conclusion**

Misstatements in a prospectus are treated seriously under Indian law, with both civil and criminal liabilities for those involved.

It reinforces the fundamental principle that investors must receive full and truthful disclosure before investing in a company.

Strict enforcement of these provisions ensures corporate accountability and investor protection.