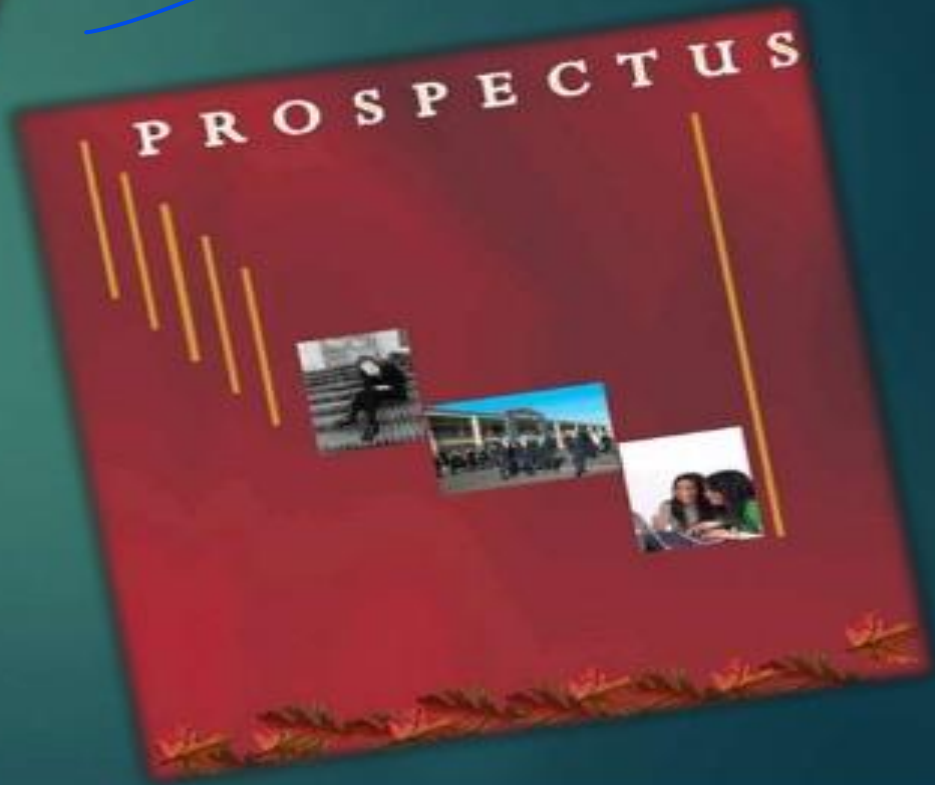


034-151  
COMPANY



PROSPECTUS

# PROSPECTUS

## MEANING:

- ▶ **Company prospectus is released by company to inform the public and investors of the various securities that are available. These documents describe about mutual funds, bonds, stocks and other forms of investments offered by the company. A prospectus is generally accompanied by basic performance and financial information about the company.**
- ▶ **Prospectus is a formal legal document, which is required by and filed with the SECP that provides details about an investment offering for sale to the public, it should contain the facts that an investor needs to make an informed investment decision**



# PROSPECTUS



## WHICH COMPANIES ARE REQUIRED TO ISSUE PROSPECTUS

- ▶ Every public listed company who intends to offer shares or debentures of the company to the public.
- ▶ Every private company who ceases to be a private company and converts into a public company and intends to offer shares or debentures of the company to the public.

# CONTENTS OF PROSPECTUS



1. The contents of the Memorandum with the particulars of signatories and number of shares subscribed by them.
2. The number and value of shares.
3. Description of business to be undertaken and its prospects.
4. Any provision in the articles relating to remuneration of directors and chief executives.
5. Particulars of the present and proposed directors, chief

# CONTENTS OF PROSPECTUS



6. The amount of minimum subscription.
7. The date and time of the opening and closing of the subscription list.
8. The amount payable on application for each share.
9. The number, description and amount of share capital issued within the two preceding years along with the amount of premium or discount, if any.
10. Name of the underwriters, if any along with opinion of directors as to financial soundness of underwriters.



# CONTENTS OF PROSPECTUS



11. The name and address of auditors and legal advisors.
12. The amount of preliminary expenses.
13. The right of voting at meetings of the company.
14. Particulars of capitalization of any reserves or profits if any.
15. Particulars of surplus on revaluation of the assets and the manner in which such surplus has been applied, adjusted or treated.

# Legal Requirements of Prospectus

- A Prospectus is required to be issued only after the incorporation of company.
- The prospectus must contain all the particulars, listed in the schedule II of Companies act.
- The prospectus must be dated.
- Before a prospectus is issued, a copy of it must be registered with the registration of companies.
- Prospectus shall be issued within ninety days of its registration .





# ***Statement in Lieu of Prospectus (SLOP)***

When the public company does not invite public to subscribe for its shares, but arrange to get money from private sectors, it need not issue a prospectus to the public. In such a case, the promoters are required to prepare a draft prospectus known as “Statement in Lieu of Prospectus”



# Misstatement in prospectus

- **Misstatement includes**
  - Untrue statement.
  - Statement which produce wrong impression.
  - Statement which are misleading.
  - Concealment of material facts.
  - Omission of facts.



# MIS –STATEMENT IN PROSPECTUS

## ➤ Rex v. Kysant

Here, Kysant issued a prospectus where it was stated that the company had paid dividend varying from 5 to 8% every year between 1911 to 1927, except in or 2 years where a lower rate of dividend or no dividend was paid. The prospectus thus rejected that the company was financially strong and stable. But, the facts were that the last 7 years, the company had incurred heavy losses and dividends were paid only out of the accumulated profits which had been stored up during the war period. The Court held that the prospectus was misleading not because of what is stated but because of what it concealed or omitted.

The Court is completely right in judging the case as the fact that the company has incurred heavy losses from past 7 years, and that the dividends is paid form a fund is a material fact. And so, it's the duty of a company to disclose such fact.



## *Statement should be meant for the party misled*

- It is necessary that the misleading statement should be meant for the party who is misled. In **Peek Vs. Gurney (1873)**, a person purchased some shares of a company from the market and then sued the promoters of the company for fraud on the ground that there were some false statements contained in the prospectus. It was held that the prospectus is meant for an original allottee of the shares by the company and not a person like the present appellant, who buys the shares subsequently from the original allottee and therefore the promoters were not liable for fraud.

# LIABILITY FOR MISSTATEMENT IN THE PROSPECTUS

- ▶ 1.) CIVIL LIABILITY
  - ▶ • AGAINST THE COMPANY
    - ▶ ◦ TO RESCIND THE CONTRACT
    - ▶ ◦ TO CLAIM THE DAMAGES
  - ▶ • AGAINST THE DIRECTORS, PROMOTERS AND EXPERTS
    - ▶ ◦ COMPENSATION
    - ▶ ◦ DAMAGES
    - ▶ ◦ DAMAGES UNDER GENERAL LAW
- ▶ 2.) CRIMINAL LIABILITY



# WHO CAN BE SUED?

- The company
- Every director
- Every person whose name appeared in the prospectus as a proposed director
- Every promoter
- Every person who authorised the issue of prospectus
- An expert ( an engineer, a chartered accountant, a company secretary, a cost accountant, etc.)

# ONUS OF PROOF

- ▶ • An allottee must prove that:
- ▶ • The misrepresentation was of fact;
- ▶ • It was in respect of material fact;
- ▶ • He acted on the misrepresentation; and
- ▶ • He has suffered damages in consequence.