

## Chapter No. 14

# Prospectus of Company

After the formation and registration of company, both private and public- the next important step for the promoters is to arrange the finance necessary for the needs of business activities.

So the required funds can be raised by these three ways.

1. Inviting and accepting deposits
2. By inviting offers to purchase the shares
3. By issuing debentures

A private company finance business activities from their own private sources so they are legally not allowed to sell shares to general public to raise finance. As a public company raises finance from offering shares to general public so whenever company offers shares to general public it is required to make a legal document for invitation and this document is known as prospectus.

Prospectus means any invitation issued to general public, it may in the form of document, notice, and circular or advertisement.



### Example:

- When advertisement in newspaper states that some shares are still available for sale according to terms of company, which may be obtained on application.
- This advertisement is prospectus because there is invitation in the advertisement.
- From the above example it is now clear that word prospectus is not limited to any formal document, however any type of invitation is called prospectus. Even you are just writing a letter to existing shareholders and offer them to buy the shares, under the concept of definition of prospectus this letter is also a prospectus.

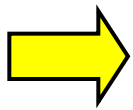
### Features of prospectus:

1. There must be invitation to public
2. Invitation must be to subscribe shares or debentures
3. Invitation must be made on behalf of company

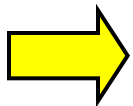
## Meaning of public issue:

- According to section 2[29] prospectus must be issued to the public.
- Here public does not mean public at large, but any section of public selected by company.
- It can be existing shareholders or members of the company. So according to law public means opposed to private communication, for example if director is inviting his friends at private dinner party for the purchase of shares, we cannot state that this offering is public offering.

## Public issue of prospectus:



The expression public issue of prospectus is not defined in the law. But it should not be mere delivery of prospectus. How it is possible that you are just delivering prospectus without advertisement. So it is obvious that prospectus must be written and there must be some attraction for readers. In above example in which director at dinner was inviting his friends to buy a shares, and we stated that it is not a public offering. But if the same happens in the presence of written document and any one of his friends is entitled to receive and act upon this written document and there is proper arrangement for the issuance of shares if someone is willing to buy the shares after reading the document, now it is not a private offer but shall be considered as a public offering.



Keep in mind that law on the number of recipients of prospectus is silent. But common sense is, that it must be offered to the appropriate number persons so that it must not be questionable in the court.

## Legal rules for issuance of prospectus:

1. **Time of issue of prospectus:** A prospectus is issued after the formation of company. It shall be published in a newspaper not less than 7 days and not more than 30 days before the opening of subscription.
2. **Date of Prospectus:** prospectus must be dated when it is prepared. And this date is considered as the date of publication if publication date is not separately provided.

3. **Consent of expert:** a statement made by an expert shall be included only when he has given consent to the issue.
4. **Registration of prospectus:** Prospectus must be registered before the issue. [Approval]
5. **Terms of contract not to be varied:** after registration the term of contracts stated in the prospectus cannot be varied.
6. **Issue of application form:** an application form must be accompanied by a prospectus.

### **Guidelines for framing Prospectus:**

A prospectus has information and attraction, on the basis of these two general public buy the shares of company, buying shares according to the written information and attractions on prospectus is considered as the contract. So, care must be taken that any information provided in the prospectus must be real, true and honest. If later on any information proved to be fake and based on misrepresentation, the issuing company can be sued.

### **Classes of prospectus:**

**Prospectus issued generally:** i.e. issued to persons who are not existing members or debenture holders of the company. For example prospectus issued by newly formed public limited company. It is required to make all statutory disclosures and requirements.

**Prospectus uniformly issued generally:** it means prospectus is being issued to general public but the offering shares or debentures are uniform with shares or debentures already quoted on stock exchange. It is not required for all statutory declaration and requirements.

**Prospectus not issued generally:** this is a prospectus issued only to existing members or debenture holders of the company, it also not required for all statutory disclosures and requirements.