

**CHAPTER III**  
**PROSPECTUS AND ALLOTMENT OF SECURITIES**

**PART I**  
**PUBLIC OFFER**

**Public offer and private placement<sup>51</sup>.**

<sup>52</sup>**23.** (1) A public company may issue securities—

- <sup>53</sup>(a) to public through prospectus (herein referred to as “public offer”) by complying with the provisions of this Part; or
- <sup>54</sup>(b) through private placement by complying with the provisions of Part II of this Chapter; or
- (c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

<sup>54</sup>(2) A private company may issue securities—

- (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
- (b) through private placement by complying with the provisions of Part II of this Chapter.

<sup>54a</sup>[(3) *Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.*<sup>54b</sup>

(4) *The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.]*

*Explanation.*—For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

51. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

52. Section 23, except sub-section (1)(b) and sub-section (2) enforced with effect from 12-9-2013. Sub-section (1)(b) and sub-section (2) enforced with effect from 1-4-2014.

53. See also SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008; See also SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021; See also SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 and SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.

54. Enforced with effect from 1-4-2014.

54a. Inserted by the Companies (Amendment) Act, 2020, w.e.f. **30-10-2023**.

54b. See Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024.

**<sup>55</sup>Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.**

<sup>56</sup>**24.**<sup>56a</sup> (1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

- (a) in so far as they relate to—
  - (i) issue and transfer of securities; and
  - (ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered by the Securities and Exchange Board by making regulations in this behalf;

- (b) in any other case, be administered by the Central Government.

*Explanation.*—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

55. Corresponds to section 55A of the 1956 Act.

56. Enforced with effect from 12-9-2013. SEBI to regulate Issue and Transfer of securities [Companies (Removal of Difficulties) Order, 2013. For details, see **Division Three.**] See also SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006; See also Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.

56a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, for section 24, the following section shall be substituted, namely:—  
 “24. *Power of International Financial Services Centres Authority to regulate issue and transfer of securities, etc.*—(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—

- (a) in so far as they relate to —
  - (i) issue and transfer of securities; and
  - (ii) non-payment of dividend,

by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in an International Financial Services Centre, except as provided under this Act be administered by the International Financial Services Centres Authority by making regulations in this behalf;

- (b) in any other case, be administered by the Central Government.

*Explanation.*—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

(2) The International Financial Services Centres Authority shall, in respect of matters specified in sub-section (1), exercise the powers under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992), as conferred upon it under section 13 of the International Financial Services Centres Authority Act, 2019 (50 of 2019).”—*Notification No. S.O. 5160(E), dated 4-11-2022.*

(2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992 (15 of 1992)<sup>57</sup>.

<sup>58</sup>**Document containing offer of securities for sale to be deemed prospectus.**

<sup>59</sup>**25.**<sup>59a</sup> (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub-sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
- (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

<sup>60</sup>(3) Section 26 as applied by this section shall have effect as if —

- (i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
  - (a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
  - (b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

57. For text of sections 11(1), (2A), (3) and (4), 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992, see **Appendix I**.

58. Corresponds to section 64 of the 1956 Act.

59. Section 25, except sub-section (3), enforced with effect from 12-9-2013. Sub-section (3) enforced with effect from 1-4-2014.

59a. See also SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012 and SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006.

60. Enforced with effect from 1-4-2014.

(ii) the persons making the offer were persons named in a prospectus as directors of a company.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

<sup>61</sup>**Matters to be stated in prospectus.**

<sup>62</sup>**26.**<sup>63</sup> <sup>63a</sup>(1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall <sup>64</sup>[state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

<sup>64a</sup>**Provided** that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992), in respect of such financial information or reports on financial information shall apply.]

(a) <sup>65</sup>[\*\*\*]

61. Corresponds to sections 55, 56, 57, 58, 60 and Schedule II of the 1956 Act.

62. Enforced with effect from 1-4-2014.

63. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. See also SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006 and SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012.

63a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (1) of section 26, for the words "Securities and Exchange Board", the words "International Financial Services Centres Authority" shall be substituted.—*Notification No. S.O. 5160(E), dated 4-11-2022.*

64. Inserted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018.

64a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in the proviso to sub-section (1) of section 26, for the words "until the Securities and Exchange Board specifies", the words "until the International Financial Services Centres Authority specifies" shall be substituted.—*Notification No. S.O. 5160(E), dated 4-11-2022.*

65. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (a) read as under :

(a) state the following information, namely:—

- (i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
- (ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- (iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
- (iv) details about underwriting of the issue;

(Contd. on page 1.52)

(b) <sup>66</sup>[\*\*\*]

(Contd. from page 1.51)

- (v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
  - (vi) the authority for the issue and the details of the resolution passed therefor;
  - (vii) procedure and time schedule for allotment and issue of securities;
  - (viii) capital structure of the company in the prescribed manner;
  - (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
  - (x) main objects and present business of the company and its location, schedule of implementation of the project;
  - (xi) particulars relating to—
    - (A) management perception of risk factors specific to the project;
    - (B) gestation period of the project;
    - (C) extent of progress made in the project;
    - (D) deadlines for completion of the project; and
    - (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
  - (xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
  - (xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
  - (xiv) disclosures in such manner as may be prescribed\* about sources of promoter's contribution;"
66. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (b) read as under :
- "(b) set out the following reports for the purposes of the financial information, namely:—
- (i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;
  - (ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:  
**Provided** that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;
  - (iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:  
**Provided** that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and
  - (iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;"

- (c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder; and
- (d) <sup>67</sup>[\*\*\*]
- (2) Nothing in sub-section (1) shall apply—
- (a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or
- (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.
- (3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.
- Explanation.*—The date indicated in the prospectus shall be deemed to be the date of its publication.
- (4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for <sup>68</sup>[filing], a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.
- (5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for <sup>68</sup>[filing] and a statement to that effect shall be included in the prospectus.
- (6) Every prospectus issued under sub-section (1) shall, on the face of it,—
- (a) state that a copy has been delivered for <sup>68</sup>[filing] to the Registrar as required under sub-section (4); and

67. Omitted by the Companies (Amendment) Act, 2017, w.e.f. 7-5-2018. Prior to its omission, clause (d) read as under :

“(d) state such other matters and set out such other reports, as may be prescribed.”

68. Substituted for “registration” by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019.

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(7) <sup>69</sup>[\*\*\*]

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable <sup>70</sup>[\*\*\*] with fine which shall not be less than fifty thousand rupees but which may extend to <sup>70a</sup>[three lakh rupees].

<sup>71</sup>**Variation in terms of contract or objects in prospectus.**

<sup>72</sup>**27.** (1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution:

**Provided** that the details, as may be prescribed<sup>73</sup>, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation:

**Provided further** that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

<sup>73a</sup>(2)<sup>73b</sup> The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be

69. Omitted by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019. Prior to its omission, sub-section (7) read as under :

“(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.”

70. Words “with imprisonment for a term which may extend to three years or” omitted by the Companies (Amendment) Act, 2020, w.e.f. 21-12-2020.

70a. Substituted for “three lakh rupees, or with both”, *ibid*.

71. Corresponds to section 61 of the 1956 Act.

72. Enforced with effect from 1-4-2014.

73. See rule 7 and Form No. PAS-1 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Division Two**).

73a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (2) of section 27, for the words “Securities and Exchange Board”, the words “International Financial Services Centres Authority” shall be substituted.—*Notification No. S.O. 5160(E), dated 4-11-2022.*

73b. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

specified by the Securities and Exchange Board by making regulations in this behalf.

**Offer of sale of shares by certain members of company.**

<sup>74</sup>**28.**<sup>75</sup> (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed<sup>76</sup>.

(2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

<sup>77</sup>**Public offer of securities to be in dematerialised form.**

<sup>78</sup>**29.** <sup>78a</sup>(1) Notwithstanding anything contained in any other provisions of this Act,—

(a) every company making public offer<sup>79</sup>; and

(b) such other class or classes of <sup>80</sup>[\*\*\*] companies as may be prescribed<sup>81</sup>,

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

<sup>82</sup>[(1A)<sup>78a</sup> In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised

74. Enforced with effect from 1-4-2014.

75. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

76. See rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Division Two**).

77. Corresponds to section 68B of the 1956 Act.

78. Enforced with effect from 12-9-2013.

78a. See also SEBI (Depositories and Participants) Regulations, 2018.

79. See rule 9 and Form Nos. PAS-7 and PAS-8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Division Two**).

80. Word "public" omitted by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019.

81. See rules 9A and 9B and Form No. PAS-6 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Division Two**).

82. Inserted by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019.

form in the manner laid down in the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.]

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

<sup>83</sup>**Advertisement of prospectus.**

<sup>84</sup>**30.**<sup>85</sup> Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

<sup>86</sup>**Shelf prospectus.**

<sup>87</sup>**31.**<sup>88</sup> <sup>88a</sup>(1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

(2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed<sup>89</sup>, with the Registrar within the prescribed<sup>89</sup> time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

**Provided** that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription

83. Corresponds to section 66 of the 1956 Act.

84. Enforced with effect from 12-9-2013.

85. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

86. Corresponds to section 60A of the 1956 Act.

87. Enforced with effect from 12-9-2013.

88. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

88a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (1) of section 31, for the words "Securities and Exchange Board", the words "International Financial Services Centres Authority" shall be substituted.—*Notification No. S.O. 5160(E), dated 4-11-2022.*

89. See rule 10 and Form No. PAS 2 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (**Division Two**).

before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

(3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

*Explanation.*—For the purposes of this section, the expression “shelf prospectus” means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

<sup>90</sup>**Red herring prospectus.**<sup>91</sup>

<sup>92</sup>**32.** (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

(3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

<sup>92a</sup>(4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

*Explanation.*—For the purposes of this section, the expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

<sup>93</sup>**Issue of application forms for securities.**

<sup>94</sup>**33.** (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:

90. Corresponds to section 60B of the 1956 Act.

91. Enforced with effect from 12-9-2013.

92. See also SEBI (Issuing Observations on Draft Offer Documents Pending Regulatory Actions) Order, 2006 and SEBI (Framework for Rejection of Draft Offer Documents) Order, 2012.

92a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (4) of section 32, for the words “Securities and Exchange Board”, the words “International Financial Services Centres Authority” shall be substituted.—*Notification No. S.O. 5160(E), dated 4-11-2022.*

93. Corresponds to section 56(3) of the 1956 Act.

94. Section 33, except sub-section (3) enforced with effect from 12-9-2013. Sub-section (3) enforced with effect from 1-4-2014. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

**Provided** that nothing in this sub-section shall apply if it is shown that the form of application was issued—

- (a) in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (b) in relation to securities which were not offered to the public.

(2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

<sup>95</sup>(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

<sup>96</sup>**Criminal liability for mis-statements in prospectus**<sup>97</sup>.

**34.** Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447:

**Provided** that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

<sup>98</sup>**Civil liability for mis-statements in prospectus.**

<sup>99</sup>**35.** (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) is a promoter of the company;
- (d) has authorised the issue of the prospectus; and

<sup>1</sup>(e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

95. Enforced with effect from 1-4-2014.

96. Corresponds to section 63 of the 1956 Act.

97. Enforced with effect from 12-9-2013.

98. Corresponds to section 62 of the 1956 Act.

99. Section 35, except sub-section (1)(e) enforced with effect from 12-9-2013. Sub-section (1)(e) enforced with effect from 1-4-2014.

1. Enforced with effect from 1-4-2014.

- (2) No person shall be liable under sub-section (1), if he proves—
- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
  - (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
  - <sup>2</sup>[(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before <sup>3</sup>[filing of a copy of the prospectus with the Registrar] or, to the defendant's knowledge, before allotment thereunder.]
- (3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

**<sup>4</sup>Punishment for fraudulently inducing persons to invest money.**

<sup>5</sup>36. Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
- (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
- (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution;

shall be liable for action under section 447.

2. Inserted by the Companies (Amendment) Act, 2017, w.e.f. 9-2-2018.

3. Substituted for "delivery of a copy of the prospectus for registration" by the Companies (Amendment) Act, 2019, w.e.f. 15-8-2019.

4. Corresponds to section 68 of the 1956 Act.

5. Enforced with effect from 12-9-2013.

**Action by affected persons.**

<sup>6</sup>37. A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

**<sup>7</sup>Punishment for personation for acquisition, etc., of securities.**

<sup>6</sup>38. (1) Any person who—

- (a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
- (b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
- (c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

<sup>7a</sup>(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

(3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

(4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

**<sup>8</sup>Allotment of securities by company.<sup>7a</sup>**

<sup>9</sup>39. (1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

<sup>9a</sup>(2) The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.

6. Enforced with effect from 12-9-2013.

7. Corresponds to section 68A of the 1956 Act.

7a. See also SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

8. Corresponds to sections 69 and 75 of the 1956 Act.

9. Section 39, except sub-section (4) enforced with effect from 12-9-2013. Sub-section (4) enforced with effect from 1-4-2014.

9a. In case of financial products, financial services or financial institutions in an International Financial Services Centre, in sub-section (2) of section 39, for the words "Securities and Exchange Board", the words "International Financial Services Centres Authority" shall be substituted. - *Notification No. S.O. 5160(E), dated 4-11-2022.*