



# CAIIB PAPER-4

## Module-D Unit-21

**BANKING REGULATIONS AND  
BUSINESS LAWS (BRBL)**



## CAIIB Paper 4 (BRBL) Module D Unit 21-Prospectus

### Prospectus

The Companies Act, 2013 {Sec. 2(70)} defines a prospectus as any document described or issued as a prospectus and includes a red herring prospectus (Sec. 32) or shelf prospectus (Sec. 31) or any notice, circular, advertisement or other document inviting offers from the public for subscription or purchase of any securities of a body corporate.

#### As per Section 32

- A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- 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.
- 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.

#### Red herring prospectus

- Means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. **Shelf prospectus** means a prospectus in 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.

**In the following cases, even though shares are offered to the public, issue of prospectus is not required:**

- When a person is invited to enter into an underwriting agreement/arrangement to purchase/subscribe the shares.
- When the shares are offered only to the existing shareholders or debenture-holders of the company.
- When the shares or debentures offered are, in all respects, uniform with the shares or debentures previously issued and listed on a recognized stock exchange.

### Compliance With Respect To Prospectus

- **Time of issue of Prospectus:** A prospectus can be issued only after the incorporation of the company.

- **Contents of the Prospectus:** Section 26 of the Companies Act, 2013 stipulates the mandatory provisions that are to be stated in the prospectus.
- **Date of publication:** It is stated that a prospectus must be dated and this ensures a prima facie evidence of the date of its publication.
- **Signature of every director on the Prospectus:** A prospectus must be signed by every person mentioned therein as a director or proposed to be a director.
- **Application form with a Prospectus:** Every application form for shares must be accompanied by a copy of the prospectus except for the application forms issued to underwriters and existing shareholders and debenture holders.
- **Statements by Expert in Prospectus:** A prospectus, including a statement purporting to be made by an expert, cannot be issued unless he has given his written consent to the issue thereof and he has not withdrawn such consent before the delivery of a copy of the prospectus for registration to the Registrar of Companies
- **Registration of the Prospectus:** Before the issue of a prospectus the same must be delivered to the Registrar of Companies for registration with the documents. 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.

### **Misstatements In A Prospectus And Remedies**

*A person who has been induced to subscribe for shares or debentures on the faith of a statement in a prospectus which is untrue has a twofold remedy:*

- **Remedy against the company**
- **Remedy against the promoters and experts** who were responsible for the issue of the prospectus. The liability can be civil or criminal.

#### **Civil Liability**

**Remedies against the Company:** If there are untrue statements or misstatements or omissions in a prospectus which have induced any shareholder or debenture holder to buy shares or debentures respectively, the person has two fold remedies:

- ✓ Rescind the contract
- ✓ Claim damages from the company whether the statement is a fraudulent one or innocent one.

**Claim remedies against the promoters and experts:** who were responsible for or associated with the issue of the prospectus. A suit for damages can be filed for misstatements in the prospectus

#### **Criminal Liability**

- It is required that certain matters and reports must be stated in the prospectus. Failure to do so will render the director or any other person responsible for the issue of such prospectus to be punished with fine.

- Section 34 provides that if prospectus contains an untrue statement, every person who is responsible for the untrue statement in the prospectus shall be punishable with a fine or imprisonment or with both.
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