

A Critical Study on Prospectus under Company Law

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Abstract: *A prospectus is an administrative record that gives you a bird's-eye view into the investment you're considering making. It's intended to offer investors straightforwardness into the company that issues stocks and securities into the money-related markets. Regardless of whether you're considering putting resources into the stock or security showcases, or are reflecting on a common store venture that can enable you to spare to purchase a home or get ready for future retirement, an administrative archive known as a prospectus offers subtleties encompassing your choices. A prospectus is a record that a company and others document with the Securities and Exchange Commission when they are putting forth new offers of a security to people in general. A standout amongst the most widely recognized explanations behind issuing a prospectus is the point at which a company is making a first sale of stock, putting offers of stock available to be purchased out of the blue. Common supports issue a prospectus at ordinary intervals since they routinely make new offers accessible. The purpose behind going with such a data alongside the prospectus is to ensure that the financial specialists are very much aware of the company's experience and generally speaking execution and the speculators don't fall into the trap of putting resources into an awful company. The main objectives of this paper are to study about the term prospectus, to study about the registration of prospectus, to study about misstatements in prospectus and to study about liability for misstatement in prospectus. The paper concludes that most of the people have answered that yes, that a private limited company can also issue a prospectus and reacted neutral for a company being liable for the misstatement in prospectus.*

Keywords: company, prospectus, finance, business, security

I. INTRODUCTION

An prospectus is a report issued by the company welcoming the general population and financial specialists for the membership of its securities. A prospectus additionally helps in advising the financial specialists about the danger of putting resources into the company. A Prospectus is required to be issued simply after the fuse of the company. These reports portray stocks, bonds and different sorts of securities offered by the company. Shared reserve companies likewise give an prospectus to imminent customers, which incorporates a report of the cash's procedures, the administrator's experience, the store's expense structure and a reserve's budget reports. An prospectus is constantly joined by execution history and money-related data of the company.

Register of prospectus: it is compulsory to get the prospectus enrolled with the Registrar of Companies before it is issued to general society. The system of getting the prospectus enlisted is as under:

A. A copy of the prospectus, appropriately marked by each individual who is named in that as a chief or a proposed executive of the company must be recorded with Registrar of Companies before the prospectus is issued to general society.

B. The accompanying record must be appended thereto:

i) Consent to the issue of the prospectus required under any individual as a specialist affirming his composed agree to the issue thereof, and that he has not pulled back his assent as aforementioned shows up in the prospectus.

ii) Copies of all agreements went into concerning the arrangement of the overseeing executive, chiefs and different officers of the company should likewise be documented with Registrar.

iii) If the evaluator or bookkeeper of the company has made any modifications in the company's record, the said changes and the reasons thereof should be recorded with the archives.

iv) There must be a copy of the application which is to be filled for the issue of the company's offers and debentures joined with the prospectus.

v) The prospectus must have the composed assent of the considerable number of people who have been named as reviewers, specialists, investors, dealers, and so on.

C. Each prospectus must have, on its essence, an exprospectusation that:

i) A copy of the prospectus has been conveyed to the Registrar for enlistment.

ii) Specifies that any reports required to be supported by this area have been conveyed to the Registrar.

D. A copy of the prospectus must be documented with the Registrar of Companies.

E. As indicated by the Section 26, no prospectus will be issued over ninety days after the date on which a copy thereof is conveyed for enlistment.

In the event that an prospectus issued in repudiation of the abovementioned – expressed arrangements, the company and each individual who knows involved with the issue of the prospectus will be culpable with a fine.

II. MISSTATEMENTS IN PROSPECTUS

According to Sec-65, an statement incorporated into an prospectus will be esteemed to be false if the statement is deluding in the frame and setting in which it is incorporated. Where there is any exclusion of an issue from the prospectus and this is made to misdirect, the prospectus is esteemed to be called as a prospectus in which a false articulation is incorporated. In prospectus, as well as an statement can be said to deceive regardless of whether it is available in any report or reminder by reference fused in that or issued therewith. The risk collects where any individual buys in for any offers or debentures on the confidence of the prospectus for any misfortune or harm he may have continued by reason of false proclamation included in that.

CASE: DERRY v. PEEK

The directors of a tramway company issued a prospectus expressing that they had the directly to run cable car vehicles with steam control rather than with steeds as previously.(De Menil, Portes, and Sinn 2003) The Act fusing the company gave that such power may be utilized with the endorse of the Board of Trade. However, the Board of Trade declined to give consent and the company must be twisted up. One of the investors sued the directors for harms for misrepresentation. Presently, the House of Lords held that the directors were not obligated in extortion since they genuinely accepted what they said in the prospectus to be valid. Ruler Herschel for this situation saw that "Misrepresentation is demonstrated when it is appeared false portrayal has been made (a) purposely, (b) without confidence in its fact, or, (c) rashly, indiscreetly whether it be false or genuine.

CRIMINAL LIABILITY:

Section 34 of the companies act, deals with the criminal liability for mis-statement in prospectus. Any misrepresentation in prospectus will prompt fraud and will pull in section 447 of companies act 2013,Section 447 states that without offering impact to any obligation under some other law until further notice in power any individual who is responsible of misrepresentation will be .punishable with imprisonment for a term not less than six months but which may extend to 10 years and shall be liable to fine not less than the amount involved in fraud but may extend to 3 times the fraud amount.(Jones 2007)

CIVIL LIABILITY:

Section 35 of the companies act, 2013; it deals with the civil liability for Mis-statement in prospectus. As per the above section the civil liabilities will be forced on director of the company, issuer of prospectus, promoter of the company, person who has authorized issue of prospectus, expert referred to in section 26.(R. Pozen and Hamacher 2015)Such above individual will actually at risk with no constraint or degree and will be liable to make great the damage or loss caused to the people who has bought in such securities based on such prospectus.

The main aim of the research paper is to study about the prospectus and liabilities for misstatement in a prospectus

OBJECTIVES:

The main objectives of this paper is to study about the term prospectus, to study about the registration of prospectus ,to study about misstatements in prospectus and to study about liability for mis-statement in prospectus.

III. REVIEW OF LITERATURE:

Section 3 (1) (i) of the Companies Act, 1956 defines a company as “a company formed and registered under this Act or an existing company”. Section 3(1) (ii) Of the act states that “an existing company means a company formed and registered under any of the previous companies laws”. This definition does not reveal the distinctive characteristics of a company .(India and Bagga 1962).“ A prospectus means any document described or issued as prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in or debentures of a body corporate. “(Bhatia and Sethi 2012)

Several company law experts and law firms that Business Standard spoke to did not want to be quoted citing conflict in business interest. To start with, there is no specific definition of misrepresentation in prospectus under the Companies Act, 2013.(Alexander, Yach, and Mensah 2011).Section 447 states that without giving effect to any liability under any other law for the time being in force any person who is guilty of fraud shall be punishable with imprisonment for a term not less than six months but which may extend to 10 years and shall be liable to fine not less than the amount involved in fraud but may extend to 3 times the fraud amount.(Emmanuel, n.d.)

When any prospectus is issued by the company, then it is basically to invite people to purchase their share. Now, it is the duty of the company to see that the statements mentioned in the prospectus are of true nature. As, prospectus is a soul of the company, it is the duty of the co. to prepare such prospectus with complete due care.(Shukla and India 1962).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 authorises the issue of such prospectus shall be liable under section 447.(Kapoor 1972)

Section 2(70) of the Companies Act, 2013 defines a prospectus as ““A prospectus means Any documents described or issued as a prospectus and includes any notices, circular, advertisement, or other documents inviting deposit fro the public or documents inviting offer from the public for the subscription of shares or debentures in a company.”It serves as an invitation to the public to subscribe to the shares and debentures of the company,It provides a legal document of the terms and conditions on which shares and debentures have been issued.(A K Majumar/dr G 2009)

When a company files for an initial public offering (IPO) with regulators, it's preparing to issue equity shares, or stock, in the financial markets -- probably for the first time ever. Considering that the company has been operating in the private sector, there won't be tons of information about the business at your fingertips.(Hudson 2013).Private limited companies are strictly prohibited from issuing prospectus and they cannot invite public to subscribe to their shares. Only public limited companies can issue prospectus. Thus, it is an open invitation extended to the public at large.(CCH Incorporated 1998).Mis-statements and false statements in the prospectus are instruments by which dishonest company promoters may practice fraud on the public money. In order to prevent this practice the law imposes certain duties and liabilities on those persons who are responsible for such issues.(Charman and Du Toit 2017).

All companies or organizations provide a prospectus to its clients, which includes all the information like company promoters, fund's strategy, managers background, financial statements, previous achievements, etc.(Hardee 1952).This Prospectus uses certain definitions and abbreviations which, unless the context otherwise indicates or implies, shall have the meanings as provided below. References to any legislation, act or regulation shall be to such legislation, act or regulation as amended from time to time.(Lemke and Lins 2015).A prospectus should give a clear view of these issues and may not be misleading. Said aspects (may) play an important role when reviewing an investment fund and especially when assessing whether or not investments should be made in such fund. A prospectus should be prepared with the highest standards of care and accuracy.(West 2013)

IV. METHODOLOGY

This paper used both primary and secondary information which are collected from the general public through the simple random sampling method. The research paper is done in both doctrinal and non-doctrinal method. The questions related to the was also taken into account. The survey was limited to 1441 samples because of the time constraint. The primary sources of information are taken from the books and statutes and the secondary sources of information are taken from the articles of the journals, working papers, thesis and presentation papers. The dependent variables are whether the private limited company can issue prospectus? and Do you agree that company is liable for misstatement of prospectus .The independent variable is occupation. The analysis of the survey is done by using chi-square and frequency test.

V. FINDINGS:

HYPOTHESIS:

Null hypothesis:

There is no significant association between the occupation and a Private Limited company issuing the prospectus.

Alternate hypothesis:

There is significant association between the occupation and a private limited company issuing the prospectus . The alternate hypothesis is proved.

Occupation * 7. Whether the private limited company can issue prospectus?

Crosstab

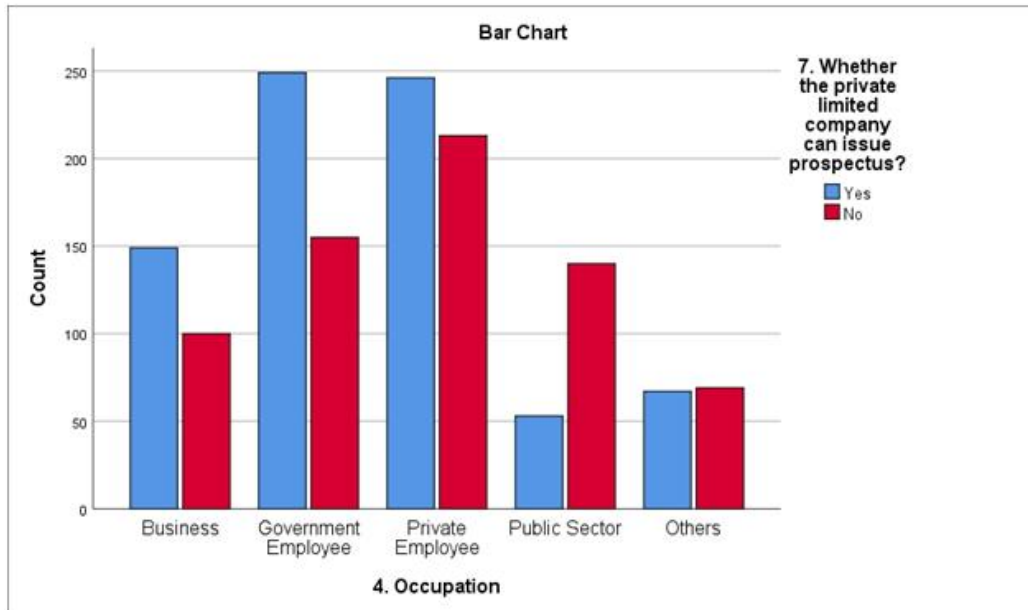
			7. Whether the private limited company can issue prospectus?		
			Yes	No	Total
4. Occupation	Business	Count	149	100	249
		% within 4. Occupation	59.8%	40.2%	100.0%
		% within 7. Whether the private limited company can issue prospectus?	19.5%	14.8%	17.3%
	Government Employee	Count	249	155	404
		% within 4. Occupation	61.6%	38.4%	100.0%
		% within 7. Whether the private limited company can issue prospectus?	32.6%	22.9%	28.0%
	Private Employee	Count	246	213	459
		% within 4. Occupation	53.6%	46.4%	100.0%

	% within 7. Whether the private limited company can issue prospectus?	32.2%	31.5%	31.9%
Public Sector	Count	53	140	193
	% within 4. Occupation	27.5%	72.5%	100.0%
	% within 7. Whether the private limited company can issue prospectus?	6.9%	20.7%	13.4%
Others	Count	67	69	136
	% within 4. Occupation	49.3%	50.7%	100.0%
	% within 7. Whether the private limited company can issue prospectus?	8.8%	10.2%	9.4%
Total	Count	764	677	1441
	% within 4. Occupation	53.0%	47.0%	100.0%
	% within 7. Whether the private limited company can issue prospectus?	100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	68.129 ^a	4	.000
Likelihood Ratio	69.594	4	.000
Linear-by-Linear Association	32.950	1	.000
N of Valid Cases	1441		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 63.89.



From the above cross tab it is understood that out of 1441 people surveyed, for the asked question “Whether a private limited company can issue a prospectus ?”, people with the occupation of business 149- YES ; 100- NO and among people with occupation as government employee 249- YES ; 155- NO , people with the occupation of private employee 246 - YES ; 213- NO and people with the occupation in public sectors 53- YES ; 140- NO; people with other occupation 67- YES ; 69 - NO. Thus most of them answered **yes** to the asked question. And from the chi- square test it is found that the Pearson chi-square value is 0.000 .Therefore the **alternate hypothesis** is proved and the null hypothesis is rejected.

HYPOTHESIS:

Null hypothesis:

There is no significant association between the occupation and agreeing that company is liable for misstatement of prospectus.

Alternate hypothesis:

There is significant association between the occupation and agreeing that company is liable for misstatement of prospectus . The alternate hypothesis is proved.

Occupation * 8. Do you agree that company is liable for misstatement of prospectus

Crosstab

		8. Do you agree that company is liable for misstatement of prospectus						
			Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Total
4. Occupation	Business	Count	98	69	38	34	10	249
		% within Occupation	39.4%	27.7%	15.3%	13.7%	4.0%	100.0%

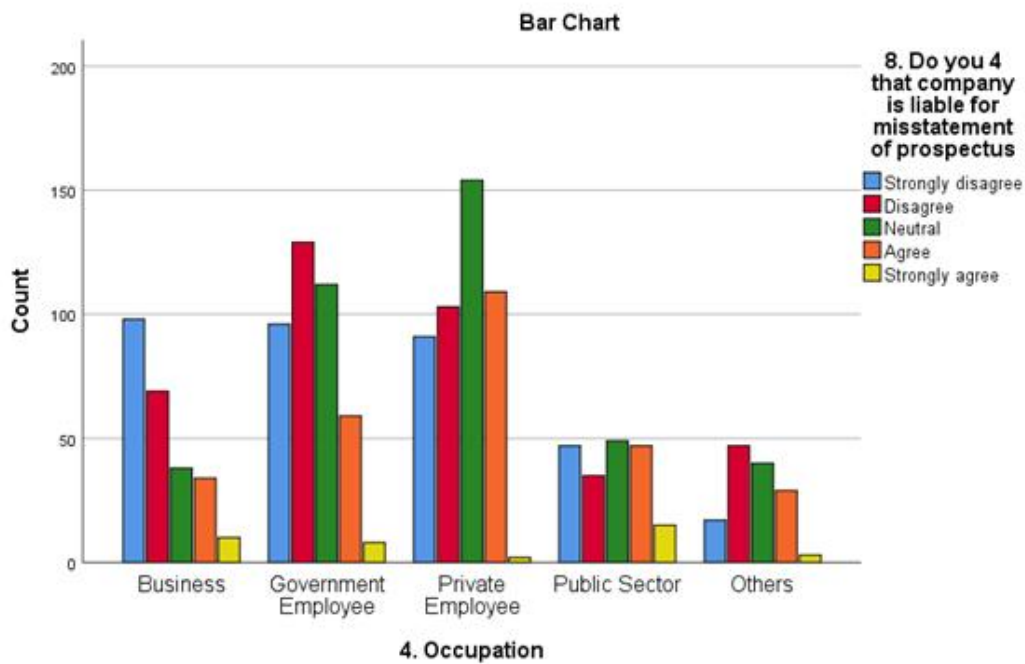
	% within 8. Do you 4 that company is liable for misstatement of prospectus	28.1%	18.0%	9.7%	12.2%	26.3%	17.3%
Government Employee	Count	96	129	112	59	8	404
	% within 4. Occupation	23.8%	31.9%	27.7%	14.6%	2.0%	100.0 %
	% within 8. Do you 4 that company is liable for misstatement of prospectus	27.5%	33.7%	28.5%	21.2%	21.1%	28.0%
Private Employee	Count	91	103	154	109	2	459
	% within 4. Occupation	19.8%	22.4%	33.6%	23.7%	0.4%	100.0 %
	% within 8. Do you 4 that company is liable for misstatement of prospectus	26.1%	26.9%	39.2%	39.2%	5.3%	31.9%
Public Sector	Count	47	35	49	47	15	193
	% within 4. Occupation	24.4%	18.1%	25.4%	24.4%	7.8%	100.0 %
	% within 8. Do you 4 that company is liable for misstatement of prospectus	13.5%	9.1%	12.5%	16.9%	39.5%	13.4%
Others	Count	17	47	40	29	3	136
	% within 4. Occupation	12.5%	34.6%	29.4%	21.3%	2.2%	100.0 %
	% within 8. Do you 4 that company is liable for misstatement of prospectus	4.9%	12.3%	10.2%	10.4%	7.9%	9.4%

Total	Count	349	383	393	278	38	1441
	% within Occupation	24.2%	26.6%	27.3%	19.3%	2.6%	100.0%
	% within 8. Do you 4 that company is liable for misstatement of prospectus	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	117.716 ^a	16	.000
Likelihood Ratio	116.247	16	.000
Linear-by-Linear Association	35.927	1	.000
N of Valid Cases	1441		

a. 1 cells (4.0%) have expected count less than 5. The minimum expected count is 3.59.



From the above cross tab it is understood that out of 1441 people surveyed, people with the occupation of **business** 98- STRONGLY DISAGREE ; 69- DISAGREE ; 38 - NEUTRAL; 34- AGREE ; 10- STRONGLY AGREE and among people with occupation as **government employee** 96- STRONGLY DISAGREE ; 129 - DISAGREE ; 112 - NEUTRAL; 59- AGREE ; 8- STRONGLY AGREE , people with the occupation of **private employee** 91 - STRONGLY DISAGREE ; 103- DISAGREE ; 154- NEUTRAL; 109- AGREE ; 2 - STRONGLY AGREE and people with occupation in **public sector** 49- STRONGLY DISAGREE ; 35- DISAGREE ; 49- NEUTRAL; 47- AGREE ; 15- STRONGLY AGREE and people with **other occupation** 17 - STRONGLY DISAGREE ; 47 - DISAGREE ; 40 - NEUTRAL; 29 - AGREE ; 3 - STRONGLY AGREE ,for the asked question “Do you agree that a company is liable for misstatement of prospectus ?” and it is found that most of the people answered neutral for this question. From the chi-square test it is found that the Pearson chi- square value is 0.000 . Thus the **alternate hypothesis** is proved and the null hypothesis is rejected.

VI. CONCLUSION

In our Article we expected to show the focal job of prospectus documents, and thus, the suitable drafting of these reports, in the achievement of first sale of stock exchanges. As prospectus have a few, anyway to a specific degree contending capacities, unique mastery is required for their legitimate encircling. For instance, as essential information reports, they ought to draw in the financial specialist network. Be that as it may, they likewise ought to be trustworthy, and precisely contain all important data for the evaluation of the venture opportunity (with no exclusion). This later thought is likewise unavoidable, in light of the fact that the lawful control of present day capital markets endorses risk for the substance of these documents. So amid the first sale of stock exchange, in setting up the prospectus document, exceptional aptitude is required. Lofty speculation specialist companies, legitimate consultants, and review firms should help the company which is opening up to the world. As indicated by their expert refinement, they can play out a sound due persistence examination, which may give a strong premise to the unobjectionable drafting of the prospectus archive. By finding the qualities and shortcomings of the company amid the due tirelessness process, the key messages and conceivable enquiries of the promoting movement are additionally imagined. Therefore from the survey this research paper concludes that most of the people have answered that yes ,that a private limited company can also issue a prospectus and reacted neutral for a company being liable for the misstatement in prospectus.

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