

Companies Act, 1913

Section 93 - Specific requirements as to particulars of prospectus

1) Every prospectus issued by or on behalf a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state- (a) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively ; and the number of founders or management or deferred shares (if any) and the nature and extent of the interest of the holders in the property and profits of the company [and the number of redeemable preference shares intended to be issued with the date or, where no date is fixed, the period of notice required and the proposed method of redemption] ; and (b) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and (c) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers [and managing agents or proposed managing agents] (if any) [and any provision in the articles or in any contract as to the appointment of managers or managing agents and the remuneration payable to them]; and (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for sub- cription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount (if any) paid on the shares so allotted; and (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued; and [(ee) where any issue of shares or debentures is underwritten, the names of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge the underwriting obligations; and] (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors ; and [(ff) where any property referred to in clause (f) has within the two years preceding the issue of the prospectus been transferred by sale, the amount paid by the purchaser at each such transfer so far as the information is available and, where any such property is a business, the profits accruing from such business during each of the three years immediately preceding the issue of the prospectus or during each year of the existence of the business if less than three years so far as the information is available. A balance sheet of the business concerned made up to a date not more than ninety days before the date of the issue of the prospectus shall be appended to the prospectus; and] (g) the amount (if any) paid or payable as purchase money in each, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good will; and (h) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, [or as discount in respect of shares issued, showing separately the amount, if any, so paid to the managing agents] : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and (i) the amount or estimated amount of preliminary expenses ; and (k) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and (l) the dates of, and parties to, every material contract a [including contracts relating to the acquisition of property to which clause (f) applies], and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract a [except a contract appointing or fixing the

remuneration of a managing director or managing agent)] entered into more than two years before the date of issue of the prospectus ; and (m) the names and addresses of the auditors (if any) of the company; and (n) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and (o) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by, [and the rights in respect of capital and dividends attached to], the several classes of shares respectively; [and] [(p) where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions;] [and] [(q) where any part of the sums required for the matters set out in sub-section (2) of (section 101) is to be provided out of sources other than share capital, particulars of the amount to be so provided and the sources thereof] [(1A) Where the prospectus is issued by a company which has been carrying on business prior to the issue thereof, the prospectus shall set out the following reports in addition to the matters referred to in sub-section (1), namely (i) a report by the auditors of the company with respect to the profits of the company including its subsidiary companies, if any, so far as the information is available in each of the three financial years immediately preceding the issue of the prospectus and with respect to the rates of the dividends, if any paid by the company on each class of shares in the company for each of the said three years giving particulars of each such class of shares on which such dividends have been paid and the source from which the dividends have been paid and particulars of the cases in which no dividends have been paid on any class of shares for any of those years, and if no accounts have been made up for any part of a period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact; (ii) if the proceeds or any part of the proceeds of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by an accountant or accountants holding the certificate referred to in section 144) who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus; Provided that if, in the case of a company which has been carrying on business for less than three years, the accounts of the company have been made up only in respect of two years or any shorter period, this sub-section shall have effect as if references to two years or such shorter period were substituted for references to three years.] [(1B) The statement referred to in clause (ff) of sub-section (1) and the report referred to in sub-section (1A) with respect to the profits of a company or business shall show clearly the trading results and all charges and expenses incidental thereto excluding income or profits having no relation to the trading for the period covered and excluding also items of profit or income of a non-recurring nature but including amounts appropriated from profits to such purposes as payment of taxation or reserves.] [* * * * *]- (2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them. (3) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons. (4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business: [Provided that the said requirements, except the requirement as to the amount or estimated amount of preliminary expenses, shall apply to a prospectus filed in pursuance of (section 154)] (5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.