



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

LIABILITY FOR MISSTATEMENTS IN A PROSPECTUS UNDER THE COMPANIES ACT, 2013: DOCTRINE, ENFORCEMENT AND CONTEMPORARY REFORM

~ *Bhounika Sarang*

ABSTRACT

A prospectus is the instrument through which a company speaks to the investing public, and the law attaches liability to what it says and what it leaves out. This paper examines the civil, criminal and regulatory consequences of a misstatement in a prospectus under Chapter III of the Companies Act 2013, read with the securities-law regime that governs public issues. It traces the common-law foundations of the disclosure duty, analyses the statutory test of misstatement, identifies the persons exposed and the defences available, and evaluates the framework against developments to October 2026: the Corporate Laws (Amendment) Bill 2026, the SEBI (ICDR) (Amendment) Regulations 2026, recent SEBI enforcement and the United Kingdom's new public offers regime. It argues that Indian law is robust against deliberate fraud but thin on negligent misstatement, secondary-market purchasers and intermediary liability, and proposes targeted reforms.

Keywords: prospectus; misstatement; Companies Act 2013; sections 34–37; SEBI; ICDR Regulations; investor protection

I. INTRODUCTION

A subscription for shares in a public issue is made on information supplied entirely by the party seeking the money. The investor cannot inspect the books or question management; the issuer, its directors and its promoters hold every material fact. The prospectus is the instrument that

narrows this asymmetry, and the law of prospectus liability is the price the legal system attaches to using it dishonestly or carelessly.¹

Indian law inherited the concept from English company legislation and has re-enacted it more than once. The 2013 Act now distributes the consequences of a misstatement across four provisions: section 34 (criminal liability), section 35 (civil liability), section 36 (fraudulent inducement to invest) and section 37 (standing of affected persons). All rest on the definition of a prospectus in section 2(70) and the content requirements of section 26.² For companies that are listed or propose to list, the Securities and Exchange Board of India (SEBI) exercises parallel powers under section 24 of the 2013 Act, the SEBI Act 1992 and the ICDR Regulations 2018.³

This paper asks how effectively that framework allocates liability for a misleading prospectus and whether recent reform improves it. The method is doctrinal: statutory analysis, English and Indian case law, regulatory orders and legislative materials current to October 2026. Part II sets out the concept and regulatory architecture; Part III the foundational disclosure duty; Part IV what counts as a misstatement; Parts V to VIII the persons exposed, the civil and criminal consequences, and the defences; Part IX a short comparison with the United Kingdom and the United States; Part X recent developments; and Part XI proposals for reform.

II. THE PROSPECTUS: CONCEPT AND REGULATORY ARCHITECTURE

A. The Statutory Definition

Section 2(70) defines a prospectus as any document described or issued as a prospectus, and includes a red herring prospectus, a shelf prospectus and any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of securities of a body corporate.⁴ The test is functional: a document that invites the public to subscribe is a prospectus whatever it is called. That makes it hard to sustain the doubt, noted in earlier drafts, whether a television or cinema advertisement can fall within the term. The words

¹ This paper proceeds on the Companies Act 2013 ('the 2013 Act'). Earlier drafts of this project relied in places on the Companies Act 1956 ('the 1956 Act'), which s 465 of the 2013 Act repeals. Those references are mapped to the corresponding current provisions in the Annexure.

² Companies Act 2013, ss 2(70), 26, 34–37.

³ Companies Act 2013, s 24(1); Securities and Exchange Board of India Act 1992; Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018 ('ICDR Regulations').

⁴ Companies Act 2013, s 2(70); cf Companies Act 1956, s 2(36).

‘advertisement or other document’ are wide, and section 30 separately prescribes what an advertisement of a prospectus must contain.⁵

B. The Dual Regulatory Structure

A public offer is regulated twice. The 2013 Act supplies the base framework for every public offer by a public company: the manner of issue (section 23(1)(a)), the content and registration of the prospectus (section 26), the written consent of any expert quoted (section 26(5)), and the bar on varying the terms or objects stated in the prospectus without a special resolution and an exit offer to dissenters (section 27).⁶ For listed companies and companies proposing to list, section 24(1) vests in SEBI the powers relating to the issue and transfer of securities, which it exercises chiefly through the ICDR Regulations.⁷ The consequence is concurrency. One misleading offer document may attract proceedings in civil and criminal courts under the Companies Act and, at the same time, adjudication by SEBI with appeal to the Securities Appellate Tribunal (SAT).⁸

C. Forms of Prospectus

Four forms must be distinguished. A *red herring prospectus* omits complete particulars of price or quantity, must be filed with the Registrar at least three days before the issue opens, carries the same obligations as a prospectus, and any variation in the final prospectus must be highlighted.⁹ A *shelf prospectus* may be filed by classes of companies that SEBI specifies, is valid for a period not exceeding one year, and dispenses with a fresh prospectus for each tranche; the issuer instead files an information memorandum updating material facts before later offers.¹⁰ Earlier drafts treated the information memorandum as a free-standing type of prospectus and confined shelf prospectuses to banks; under the 2013 Act the memorandum is the updating document that accompanies a shelf prospectus, and eligibility is a matter of SEBI’s specification. An *abridged prospectus*, setting out the salient features, must accompany every application form.¹¹ A *deemed prospectus* arises under section 25: where a company allots

⁵ Companies Act 2013, s 30. The doubt arose under the 1956 formulation read with the General Clauses Act 1897, s 3(18) (definition of ‘document’).

⁶ Companies Act 2013, ss 23(1)(a), 26, 26(5), 27.

⁷ Companies Act 2013, s 24(1), the successor to s 55A of the 1956 Act cited in earlier drafts.

⁸ Securities and Exchange Board of India Act 1992, s 15T.

⁹ Companies Act 2013, s 32(1)–(3).

¹⁰ Companies Act 2013, s 31(1)–(2).

¹¹ Companies Act 2013, s 33(1).

securities with a view to their being offered for sale to the public, the document making that offer is deemed a prospectus issued by the company. If it is shown that a public offer was made within six months of the allotment, or that the full consideration had not been received when the offer was made, that is, unless the contrary is proved, evidence that the allotment was made with that view.¹²

D. Public Offer and Private Placement

Whether an offer is public decides whether a prospectus is needed at all. Under the 1956 Act an offer to fifty or more persons was public. The 2013 Act permits private placement only to a select group of identified persons, not exceeding fifty or such higher number as is prescribed; the Prospectus Rules prescribe two hundred in a financial year, excluding qualified institutional buyers and employees under stock option schemes.¹³ In *Sahara India Real Estate Corp Ltd v SEBI* the Supreme Court looked to substance rather than label, holding that offers of optionally fully convertible debentures to a very large number of persons were a public issue that could not be passed off as private placement, with securities-law compliance following.¹⁴ The fifty-person threshold in earlier drafts should therefore be read as historical.

III. THE DISCLOSURE DUTY AND THE ‘GOLDEN RULE’

English courts formulated the duty in the mid-nineteenth century. In *New Brunswick and Canada Railway and Land Co v Muggeridge*, Kindersley VC held that those who invite the public to take shares must state everything with strict accuracy and must omit no fact within their knowledge that could affect the nature, extent or quality of the advantages the prospectus holds out.¹⁵ The House of Lords adopted the principle in *Central Railway Co of Venezuela v Kisch*.¹⁶ This is the ‘golden rule’ described in earlier drafts: a true account of the business, accuracy that survives verification, and a complete and fair picture beyond the bare statutory minimum.

Three features keep the rule relevant. First, it is a duty of completeness as well as truth. In *R v Kylsant* directors were convicted on a prospectus each of whose statements was literally

¹² Companies Act 2013, s 25(1)–(2).

¹³ Companies Act 2013, s 42(2); Companies (Prospectus and Allotment of Securities) Rules 2014, r 14; cf Companies Act 1956, s 67(3).

¹⁴ *Sahara India Real Estate Corp Ltd v Securities and Exchange Board of India* (2013) 1 SCC 1.

¹⁵ *New Brunswick and Canada Railway and Land Co v Muggeridge* (1860) 1 Dr & Sm 363, 381–82.

¹⁶ *Central Railway Co of Venezuela v Kisch* (1867) LR 2 HL 99, 113.

accurate but which, read as a whole, gave a false impression of the company's profitability; a set of true statements, the court observed, can add up to a false one.¹⁷ Section 34 now codifies the point by reaching statements 'misleading in form or context' and any inclusion or omission 'likely to mislead'.¹⁸ Second, the duty is not exhausted by prescribed contents. Section 26 and Schedule VI of the ICDR Regulations set minimum disclosures; a material fact outside the lists must still be stated.¹⁹ Third, the structure of liability reflects a historical correction. *Derry v Peek* confined deceit to statements made knowingly, without belief in their truth, or recklessly,²⁰ leaving investors misled by careless prospectuses without remedy. Parliament responded with the Directors' Liability Act 1890, which imposed liability for untrue statements subject to the defendant proving reasonable belief.²¹ Sections 34 and 35 descend from that settlement, with the burden of exculpation on the defendant.

IV. THE ANATOMY OF A MISSTATEMENT

A. The Statutory Test

Section 34 reaches a prospectus that includes a statement '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'. Section 35 applies where a subscriber has acted 'on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading' and has sustained loss.²² Three consequences follow. Omission is treated exactly as misstatement, reversing the common-law position in *Peek v Gurney*, where the House of Lords refused relief for non-disclosure.²³ Section 34 does not require proof that anyone was in fact misled; capacity to mislead suffices. And section 35 adds subscription, reliance and loss, so that the two sections operate at different thresholds: the first polices the document, the second compensates the investor. Because the test is whether a statement is misleading in context, an ambiguous statement is judged by how a reasonable investor would read the document as a whole, not by the meaning the issuer later says it intended.

¹⁷ *R v Kylsant* [1932] 1 KB 442, 448 (CCA).

¹⁸ Companies Act 2013, s 34.

¹⁹ Companies Act 2013, s 26(1); ICDR Regulations, Sch VI.

²⁰ *Derry v Peek* (1889) 14 App Cas 337, 374 (HL) (Lord Herschell).

²¹ Directors' Liability Act 1890 (53 & 54 Vict c 64).

²² Companies Act 2013, ss 34, 35(1).

²³ *Peek v Gurney* (1873) LR 6 HL 377.

B. Fact, Opinion and Forecast

Earlier drafts stated, on the authority of *Rajagopala Iyer*, that a promise about the future is not a statement of existing fact.²⁴ That is a correct starting point but incomplete. A representation of present intention is a statement of fact about the maker's state of mind. In *Edgington v Fitzmaurice* directors who said that borrowed money would be used to improve the business, when they meant to pay pressing debts, were liable for misrepresentation.²⁵ A statement of opinion by the party who knows the facts best may itself imply material facts.²⁶

The Indian statute goes further. Section 36 punishes anyone who 'knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading' to induce an investment.²⁷ Statements of the objects of an issue, projected capacity or implementation timelines are therefore actionable where they misstate present intention or are made recklessly. SEBI's orders on the use of IPO proceeds proceed on this footing (Part X).

C. Time and Reliance

A statement true when the prospectus is issued may become false before the investor acts. In *With v O'Flanagan* a representation true when made was held actionable because it ceased to be true before the contract was concluded and was not corrected.²⁸ The 2013 Act meets the problem only in part. The criminal defence and the defence for expert-sourced statements speak of belief 'up to the time of the issue of the prospectus' (sections 34 proviso and 35(2)(c)), yet the subscriber acts later. The investor's protection in the interval rests on the restriction on variation (section 27), the duty to highlight differences between a red herring prospectus and the final prospectus (section 32(3)) and the continuing anti-fraud regime of securities law.²⁹

As to reliance, English law does not bar an investor merely because he failed to verify the statement.³⁰ Indian contract law is less generous where rescission is sought: under section 19 of the Indian Contract Act 1872, a contract induced by misrepresentation, or by silence fraudulent within section 17, is not voidable if the party had the means of discovering the truth

²⁴ *Rajagopala Iyer v South Indian Rubber Works* AIR 1942 Mad 656.

²⁵ *Edgington v Fitzmaurice* (1885) 29 Ch D 459, 483 (CA) (Bowen LJ).

²⁶ *Smith v Land and House Property Corp* (1884) 28 Ch D 7 (CA).

²⁷ Companies Act 2013, s 36.

²⁸ *With v O'Flanagan* [1936] Ch 575 (CA).

²⁹ Companies Act 2013, ss 27, 32(3).

³⁰ *Redgrave v Hurd* (1881) 20 Ch D 1 (CA).

with ordinary diligence.³¹ Section 35 contains no such qualification in terms but requires that the subscriber acted on the statement. How far an investor must read a prospectus in light of other public information remains unsettled in the reported decisions consulted for this paper.

V. PERSONS EXPOSED TO LIABILITY

Section 35(1) fixes liability on the company itself and on five categories of person: every director at the time of issue; every person who has authorised himself to be named, or has agreed to become, a director; every promoter; every person who has authorised the issue; and every expert referred to in section 26(5).³² Section 34 is framed more briefly and attaches to ‘every person who authorizes the issue’.³³ Four points deserve emphasis.

First, directors’ liability is individual but not uniform. Section 149(12) confines the exposure of independent and non-executive directors, notwithstanding anything in the Act, to omissions or commissions by the company that occurred with their knowledge, attributable through board processes, and with their consent or connivance or where they had not acted diligently.³⁴ Whether this qualifies the express words of section 35(1)(a) has not, in the sources consulted, been authoritatively decided, and a prudent independent director should assume that the board record will be examined.

Second, promoter liability turns on the statutory definition, which captures persons named in the prospectus or annual return, persons in control of the company’s affairs and persons on whose advice the board habitually acts, but excludes advice given in a professional capacity.³⁵

Third, an expert includes an engineer, valuer, chartered accountant, company secretary, cost accountant and any other person empowered by law to issue a certificate; the expert’s written consent is a precondition for inclusion of the expert’s statement, and the expert must not be, or have been, engaged or interested in the company’s formation, promotion or management.³⁶ Because the expert is separately listed in section 35(1)(e), the better reading, consistent with the English legislation from which the provision derives and with earlier drafts, is that the expert answers for the statement made in that capacity, although the text does not say so.

³¹ Indian Contract Act 1872, ss 17, 19 (Exception 2).

³² Companies Act 2013, s 35(1)(a)–(e).

³³ Companies Act 2013, s 34.

³⁴ Companies Act 2013, s 149(12).

³⁵ Companies Act 2013, s 2(69).

³⁶ Companies Act 2013, ss 2(38), 26(5).

Fourth, intermediaries. Lead managers and merchant bankers are not named in section 35(1) unless they have authorised the issue, but they carry independent due-diligence duties under the SEBI regime, and SEBI has penalised them for relying on issuers' documents without verification.³⁷

VI. CIVIL LIABILITY AND REMEDIES

Section 35(1) imposes liability to pay compensation to 'every person who has sustained such loss or damage', without prejudice to punishment under section 36. The claimant must have subscribed for securities acting on the misleading statement or omission, and the loss must be a consequence of it. Where the prospectus was issued with intent to defraud, section 35(3) removes any limitation of liability and makes every person in section 35(1) personally responsible for all losses of subscribers.³⁸ Three features stand out.

First, standing. Section 37 allows a suit or other action under sections 34, 35 or 36 by 'any person, group of persons or any association of persons affected', which is wide enough to support collective proceedings.³⁹ Section 245 separately lets a qualifying class of members or depositors seek damages or compensation from the company, its directors, auditors and experts for fraudulent, unlawful or wrongful conduct, subject to the section's threshold conditions.⁴⁰

Second, the measure of compensation. The Act prescribes none. By analogy with deceit, the House of Lords in *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* allowed recovery of all loss directly flowing from the transaction induced by fraud, whether or not foreseeable.⁴¹ Whether an Indian court would apply that measure to a non-fraudulent misstatement under section 35(1), or a narrower one, is unsettled.

Third, the statutory remedy is confined to subscribers. A purchaser in the secondary market who relies on the prospectus falls outside section 35(1) on its language, though SEBI may

³⁷ Securities and Exchange Board of India (Merchant Bankers) Regulations 1992; Moneylife, 'IPO Irregularities: SBL Infratech and Fast Track Finsec Slapped with Rs15 Lakh Penalty by SEBI' (19 May 2025) <<https://moneylife.in/article/ipo-irregularities-sbl-infratech-and-fast-track-finsec-slapped-with-rs15-lakh-penalty-by-sebi/77164.html>>; Moneylife, 'Gretex Corporate Services Slapped with ₹15 Lakh Penalty for Failures in Due Diligence and Disclosures' (13 January 2026) <<https://www.moneylife.in/article/gretex-corporate-services-slapped-with-15-lakh-penalty-for-failures-in-due-diligence-and-disclosures/79371.html>>.

³⁸ Companies Act 2013, s 35(1), (3).

³⁹ Companies Act 2013, s 37.

⁴⁰ Companies Act 2013, s 245(1)(g).

⁴¹ *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* [1997] AC 254 (HL).

protect such investors through directions under section 11B of the SEBI Act.⁴² The contractual remedy of rescission survives: a subscriber induced by misrepresentation may avoid the allotment under section 19 of the Contract Act, but must act promptly, and the right is lost once the company is wound up.⁴³

VII. CRIMINAL AND REGULATORY LIABILITY

Section 34 makes every person who authorises a prospectus containing an untrue or misleading statement 'liable under section 447'. Section 36 separately applies section 447 to anyone who knowingly or recklessly makes a false, deceptive or misleading statement, promise or forecast, or deliberately conceals material facts, to induce another to subscribe for, acquire, dispose of or underwrite securities or to obtain credit facilities. Section 448 reaches statements known to be false, and omissions of facts known to be material, in any prospectus or other document required by the Act.⁴⁴

Section 447 defines fraud as any act, omission, concealment of fact or abuse of position committed with intent to deceive, to gain undue advantage or to injure the interests of the company, its shareholders, creditors or any other person, whether or not there is wrongful gain or loss. Punishment is imprisonment from six months to ten years and a fine of not less than the amount involved and up to three times that amount; where the fraud involves public interest, imprisonment of at least three years. A lesser tier, added in 2015, applies where the amount is below ₹10 lakh or one per cent of turnover, whichever is lower, and public interest is not involved: imprisonment up to five years, a fine up to ₹50 lakh, or both.⁴⁵ Section 34 contains no express mental element beyond authorisation, so the operative protection is its proviso (Part VIII), which places the burden on the accused. Section 36, by contrast, requires knowledge or recklessness and so tracks the common-law standard in *Derry v Peek*. Procedural non-compliance with section 26 is punished separately by section 26(9), which at present carries criminal consequences for the company and every person knowingly a party to the issue; the 2026 Bill would replace them with a penalty (Part X).

⁴² Securities and Exchange Board of India Act 1992, s 11B.

⁴³ Indian Contract Act 1872, s 19; *Oakes v Turquand* (1867) LR 2 HL 325.

⁴⁴ Companies Act 2013, ss 34, 36, 448.

⁴⁵ Companies Act 2013, s 447 and provisos. Offences punishable with imprisonment of two years or more are triable by a Special Court: s 435(1)(a).

SEBI's powers are independent of the Companies Act. Section 12A of the SEBI Act and regulations 3 and 4 of the PFUTP Regulations 2003 prohibit fraud in connection with the issue of securities, and 'fraud' is defined to include a representation made recklessly or without reasonable ground for believing it true.⁴⁶ Penalty under section 15HA ranges from ₹5 lakh to ₹25 crore or three times the profits made, whichever is higher, and SEBI may also restrain access to the market and order disgorgement.⁴⁷ The Supreme Court has held that fraud in SEBI proceedings is established on a preponderance of probabilities, not beyond reasonable doubt.⁴⁸ The practical result is that SEBI, rather than the criminal courts, is the more active enforcer of prospectus accuracy.

VIII. DEFENCES

Criminal liability. The proviso to section 34 exempts a person who proves either that the statement or omission was immaterial, or that he had reasonable grounds to believe, and did up to the time of issue believe, that the statement was true or that the inclusion or omission was necessary.⁴⁹ The onus lies on the defendant, and the belief must be both reasonable and actual. A director who signed without reading the document, or an issuer that never verified its claims, will struggle to show reasonable grounds. Earlier drafts listed 'meaningless' statements as an exemption, which is the proviso's 'immaterial' in other words, and the 1956 Act's defences of unawareness, honest factual mistake and judicial excuse. The latter do not appear in sections 34 and 35 as enacted.

Civil liability. Section 35(2) offers three defences: that the person, having consented to be a director, withdrew consent before issue and the prospectus was issued without his authority; that the prospectus was issued without his knowledge or consent and he promptly gave reasonable public notice on becoming aware; and, for a misleading statement attributed to an expert, that it was a correct and fair representation of the expert's statement or report and the defendant reasonably believed up to issue that the expert was competent and had consented.⁵⁰ The Act as originally passed contained only the first two. Notably, section 35(2) contains no

⁴⁶ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003, regs 2(1)(c), 3, 4; SEBI Act 1992, s 12A.

⁴⁷ SEBI Act 1992, ss 11B, 15HA.

⁴⁸ *Securities and Exchange Board of India v Kanaiyalal Baldevbhai Patel* (2017) 15 SCC 1.

⁴⁹ Companies Act 2013, s 34 proviso.

⁵⁰ Companies Act 2013, s 35(2)(a)–(c). Clause (c) was inserted by the Companies (Amendment) Act 2017 with effect from 9 February 2018 and amended by the Companies (Amendment) Act 2019.

general defence that the defendant reasonably believed a non-expert statement to be true, which the 1956 Act allowed. The defences listed in earlier drafts (revocation of approval after issue but before allotment; reasonable belief in each statement) therefore describe the repealed scheme. For statements not attributed to experts, civil liability turns on whether the statement was misleading, not on the defendant's care, and the Act supplies no defence tailored to experts themselves.

Residual relief. Section 463 allows a court to relieve an officer who has acted honestly and reasonably and ought fairly to be excused, and may be invoked in proceedings for default or breach of duty; whether it extends to a section 35 claim is untested.⁵¹ Outside the Companies Act, SEBI has treated verification as a duty that a merchant banker cannot discharge merely by relying on the issuer's undertakings.

IX. A COMPARATIVE PERSPECTIVE

Two comparators illuminate the Indian position. In the United Kingdom, investors who acquire securities in reliance on a prospectus may claim compensation under section 90 of the Financial Services and Markets Act 2000. Since 19 January 2026 the Public Offers and Admissions to Trading Regulations 2024 and the FCA's new Prospectus Rules (PRM) have replaced the UK Prospectus Regulation, and the PRM introduce 'protected forward-looking statements' for which liability is reported to turn on dishonesty or recklessness.⁵² In the United States, section 11 of the Securities Act 1933 gives purchasers a claim against the issuer, which is strictly liable, and against directors, signing officers, underwriters and experts, who escape by proving due diligence. The Supreme Court has held that a statement of opinion is actionable if not sincerely held or if it omits facts about its basis that make it misleading.⁵³

Against these models the Indian scheme confines civil claims to subscribers, offers no due-diligence defence in section 35(2) to non-expert participants, and has no structured treatment

⁵¹ Companies Act 2013, s 463.

⁵² Public Offers and Admissions to Trading Regulations 2024, SI 2024/105 (in force 19 January 2026); Financial Services and Markets Act 2000, s 90; Slaughter and May, *Public Offers and Admissions to Trading Regime: New Rules Come into Force* (January 2026) <<https://slaughterandmay.com/media/fdqdfv4g/public-offers-and-admissions-to-trading-regime-new-rules-come-into-force-highlights-for-equity-capital-markets.pdf>>; Freshfields, *UK Prospectus Regime Reform: Key Changes for Regulated Market Issuers in the FCA's Final Rules* <<https://www.freshfields.com/globalassets/noindex/uk-prospectus-regime-reform--key-changes-for-regulated-market-issuers-in-the-fcas-final-rules.pdf>>.

⁵³ Securities Act 1933, s 11 (15 USC § 77k); *Omnicare, Inc v Laborers District Council Construction Industry Pension Fund* 575 US 175 (2015).

of forward-looking statements, leaving the line between honest forecast and reckless statement to section 36 and the courts.

X. CONTEMPORARY DEVELOPMENTS

A. *The Corporate Laws (Amendment) Bill 2026*

The Bill was introduced in the Lok Sabha on 23 March 2026 as Bill No 85 of 2026 and referred to a Joint Parliamentary Committee, which presented its report on 3 August 2026.⁵⁴ Two clauses touch prospectus liability. Clause 24 substitutes section 26(9) so that a prospectus issued in contravention of section 26 would attract a penalty of ₹2 lakh on the company and every person knowingly a party, in place of the present criminal consequences. Clause 99 raises the lesser-fraud tier of section 447 from ₹10 lakh to ₹25 lakh and the maximum fine from ₹50 lakh to ₹1 crore. Sections 34 to 37 are untouched. At the time of writing (October 2026) the Bill remains pending. Its design is instructive: procedural default is moved to a monetary penalty while deliberate misstatement stays within section 447, which is the distinction this paper draws between sections 26(9) and 34 to 36.

B. *The SEBI (ICDR) (Amendment) Regulations 2026*

Following a consultation paper of 13 November 2025 and Board approval on 17 December 2025, SEBI notified the SEBI (ICDR) (Amendment) Regulations 2026 on 16 March 2026. The package requires a concise, standardised draft abridged prospectus to accompany the draft offer document, adds QR codes and links for access, and removes the separate offer document summary.⁵⁵ The consultation had proposed to abolish the abridged prospectus in favour of the summary; the final rules went the other way. For liability the significance is that the abridged prospectus, which section 33 makes mandatory with application forms, becomes the retail

⁵⁴ Corporate Laws (Amendment) Bill 2026 (Bill No 85 of 2026) <[https://prsindia.org/files/bills_acts/bills_parliament/2026/Corporate_Laws_\(A\)_Bill_2026_Text.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2026/Corporate_Laws_(A)_Bill_2026_Text.pdf)>; PRS Legislative Research, *Joint Parliamentary Committee Report Summary: The Corporate Laws (Amendment) Bill 2026* (31 August 2026) <<https://prsindia.org/billtrack/prs-products/prs-jpc-report-summary>>. Status is as reported at the date of writing; the Committee's recommendations may alter the text.

⁵⁵ Business Standard, 'SEBI amends IPO Regulations to enhance ease of doing business and increase participation of retail investors' (18 December 2025) <https://www.business-standard.com/amp/markets/capital-market-news/sebi-amends-ipo-regulations-to-enhance-ease-of-doing-business-and-increase-participation-of-retail-investors-125121800449_1.html>; Cyril Amarchand Mangaldas, *Client Alert: SEBI ICDR Amendment Regulations 2026* (March 2026) <<https://www.cyrilshroff.com/wp-content/uploads/2026/03/Client-Alert-SEBI-ICDR-Amendment-Regulations-2026.pdf>>; Taxguru, 'SEBI ICDR Amendments Notified on 16 March 2026' <<https://taxguru.in/?p=1035350>>.

investor's principal document. An omission material to the retail reader is a misstatement on the statutory test, so a compressed format raises rather than lowers the premium on accuracy.

C. Enforcement Trends

SEBI's recent orders show offer-document misstatement to be a continuing priority. In May 2025 it penalised SBL Infratech and its merchant banker, the banker having relied on the issuer's documents without independent verification. In January 2026 it penalised Gretex Corporate Services as merchant banker, holding that a withdrawn IPO had to be disclosed at the DRHP stage and that correction in the RHP did not cure the lapse. In an order reported on 31 August 2026, SEBI barred Trafiksol ITS Technologies and two promoter-directors from the market for one year and imposed penalties of ₹1.05 crore for misleading financial disclosures and for omitting a material relationship connected with the merchant banker.⁵⁶ The earlier landmark is the October 2014 order against DLF over its 2007 IPO, where SEBI found active and deliberate suppression of material information. The SAT, by majority, set that order aside in March 2015, stressing the merchant bankers' role in disclosure, and SEBI carried the matter to the Supreme Court.⁵⁷ The pattern is consistent: enforcement runs through SEBI and falls heavily on intermediaries, while the private remedies in sections 35 and 37 remain little used.

XI. SUGGESTIONS FOR REFORM

Five reforms follow from the analysis. First, section 35(1) should extend to purchasers in the secondary market within a defined period after listing who can trace their purchase to the offer document, as section 90 of the English statute does. Second, section 35(2) should carry a statutory due-diligence defence for non-expert participants, paired with proportionate liability, so that care is rewarded and liability does not approach strictness for directors who acted reasonably; lead managers should be named expressly. Third, the Act should provide a structured safe harbour for identified forward-looking statements accompanied by meaningful cautionary language, reserving liability for knowing or reckless statements, which section 36 already contemplates. Fourth, the Act should clarify how section 149(12) interacts with

⁵⁶ Moneylife, 'SEBI Bars Trafiksol ITS Technologies, Promoters for One Year, Imposes ₹1.05 Crore Penalty Over IPO Disclosures' (31 August 2026) <<https://www.moneylife.in/article/sebi-bars-trafiksol-its-technologies-promoters-for-one-year-imposes-105-crore-penalty-over-ipo-disclosures/81509.html>>. The SBL Infratech and Gretex orders are cited at the notes to Part V.

⁵⁷ Supreme Waskar, 'SEBI's Order in the DLF Case: A Summary' *IndiaCorpLaw* (24 October 2014) <<https://indiacorplaw.in/2014/10/24/sebis-order-in-dlf-case-summary/>>; Realty n More, 'SAT quashes Sebi ban on DLF' <<https://realtynmore.com/sat-quashes-sebi-ban-on-dlf/>>; Realty n More, 'Sebi moves SC seeking directive for DLF ban' (25 April 2015) <<https://realtynmore.com/?p=12474>>.

sections 34 and 35, and should prescribe a measure of compensation under section 35. Fifth, Parliament should keep the line the 2026 Bill draws: monetary penalties for procedural defaults under section 26, and the full force of section 447 for deliberate or reckless misstatement.

XII. CONCLUSION

The 2013 Act places a demanding standard on those who issue a prospectus: the document must be true, complete and not misleading in context, and the persons who authorise it answer civilly, criminally and before the securities regulator if it is not. The statutory structure is sound against deliberate fraud, and the common-law foundations of the disclosure duty remain visible in sections 34 to 36. Its weaknesses lie elsewhere: a civil remedy limited to subscribers, an absence of a general reasonable-belief defence in section 35(2), no principled treatment of forecasts, and heavy dependence on SEBI for enforcement. The current reform cycle improves the allocation between procedural and substantive wrongs and the retail usability of offer documents, but leaves these structural questions open. Closing them would align Indian law with the direction of reform in the United Kingdom and strengthen the confidence on which primary markets depend.