

# COMPANY LAW

UNIT 3 : Share Capital

TOPIC-ALLOTMENT OF SHARES

# ALLOTMENT OF SECURITIES (Sec.39 – Sec.40)

## MEANING OF ALLOTMENT

A prospectus issued by a company is merely *an invitation to offer*. When the potential investor makes an application for securities, it is an *offer* from the applicant. The BOD of the company can accept or reject this offer. When the BOD make an allotment of shares, it implies *offer is accepted* and a *binding contract* takes place between the applicant and the company .

Thus, **allotment means the *appropriation out of the previously unappropriated capital of the company, of certain number of share \debentures to an applicant by company***. It is for this reason that *reissue of forfeited shares is not regarded as allotment of shares* as these shares are not fresh shares ,rather these are second hand shares.

The provisions governing allotment of securities may be studied under two heads

- General Provisions ( under Indian Contract Act)
- Special Provisions (under the Companies Act)

General provisions (applicable to both private as well as public companies)	Special Provisions (applicable to only public companies going for public offer)
Allotment must be made by proper authority i.e. <i>by resolution of BOD or Allotment Committee</i>	Section 26 (4)- requires Registration of Prospectus with ROC before it is issued to public
Allotment must be made within proper time- i.e. <i>specified time or otherwise reasonable time</i>	Section 29- requires public offer of securities to be in dematerialized form only
Allotment must be communicated- i.e. <i>communication of acceptance must be by the prescribed mode or otherwise by ordinary mode of transmission (like post)</i>	<p><b>Section 39 – states allotment requirements</b></p> <p>Sec 39(1) -No allotment unless minimum subscription as stated in prospectus and application money is duly received by the co. by cheque or other instrument. <b>(SEBI has prescribed that minimum subscription must at least be 90% of the offer)</b></p> <p>Sec 39(2)- Minimum application money payable shall be 5% of nominal value of security or such other percentage specified by SEBI (which is <b>minimum 25% of nominal value</b>)</p> <p>Sec 39(3)- If minimum subscription and application money is not received within 30 days from date of issue of prospectus or such other period as specified by SEBI, the whole amount received shall be returned within prescribed time i.e. 15 days from closure of issue otherwise interest @15% p.a. will be charged from the officers in default for the delayed period.</p>
Allotment must be absolute and unconditional- <i>allotment must be made on the same terms as stated in application for shares. If there is a variation, there is no contract. Case- Raman Bhai vs Ghasiram-Here the applicant while applying for shares put a condition that he be appointed as cashier for the allotment of shares. Shares were allotted to him but he was not appointed as cashier. It was held that this allotment was not valid as acceptance was not as per the terms of the offer and the applicant was not bound by the allotment.</i>	<p><b>Section 40- Listing requirements</b></p> <p>Sec 40(1)- Every company, before making public offer, shall have to apply to one or more recognised stock exchanges and obtain permission for listing.</p> <p>Sec 40(2)- Prospectus of such company shall also state the names of all such stock exchanges where it has applied for listing.</p> <p>Sec 40(3)- All application money received to be kept in a separate bank account in a scheduled bank and not to be used for any other purpose except adjustment towards allotment, if listing permission granted or repayment of money, if allotment not done.</p>
<p><b>Effect of non compliance of general provisions</b></p> <p>Allotment is null and void</p>	<p><b>Effect of non compliance of special provisions.</b></p> <p>Non compliance of sec. 26 or 29 or 39 - prescribed fine is imposed on co. + every defaulting officer.</p> <p>Non compliance of sec 40 (listing requirement) – here the allotment void. Also the company is punishable with fine ranging between ₹5 lakhs to ₹ 50 lakhs and every defaulting officer with imprisonment up to 1 year or fine ranging between ₹ 50000 to ₹ 2 lakhs or both</p>

# Return of Allotment( Sec.39(4))

Whenever any public or private company , makes any allotment of securities, it has to file with the registrar a **Return of Allotment** within such time and in such manner as is prescribed by Rule12 of Companies (Prospectus and Allotment of Securities )Rules,2014-

- The company must file a duly dated and signed Return of Allotment with ROC within 30 days of allotment.
- The Return shall have particulars of allottees viz. names, addresses, occupations, no. of securities allotted, amount paid etc.
- If securities are allotted for consideration other than cash, relevant contracts of sale/services must also be attached to it.
- In case of bonus issue, a copy of resolution authorizing issue of bonus shares should be attached to the Return of Allotment.
- In case of default in above provisions ,the company and its defaulting officer shall be liable to prescribed penalty.

# Payment of Underwriting Commission (Sec.40(6))

An underwriting contract is an agreement entered before the shares are brought before the public , that in case the public does not take up the whole of them or the number mentioned in the agreement, the underwriter , will for an agreed commission, take an allotment of such part of the shares as public has not applied for. Underwriting is a device used by companies to make sure that the necessary capital comes forth even if the proposed issue gets a poor public response. Further, underwriting of securities instils confidence into the mind of prospective investors as they know that underwriters underwrite only when they find that the company is sound and has good prospects. Underwriting is paid on all shares covered under the contract even if there is oversubscription. As per Rule 13 of Companies (Prospectus and Allotment of Securities )Rules,2014 the following conditions must be satisfied before paying underwriting commission-

- The payment of commission must be authorised by AOA.
- Rate of commission can not exceed 5% in case of shares and 2.5% in case of debentures, of the price at which they are issued.
- Further, the rate of commission cannot exceed the rate of underwriting commission ( if any) specified in AOA
- The rate of commission agreed must be disclosed in the prospectus.
- A copy of underwriting contract should be delivered to the registrar at the time when prospectus is delivered for registration.