

V. Allotment of Securities : Section 39 [Rule 11 of Companies (PAS) Rules, 2014]

Meaning of Allotment:
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Invitation to offer → Offer → Acceptance.
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Prospectus Application Allotment

→ Acceptance by the Company of Offer to take the shares.

→ Appropriation out of previously unappropriated Capital of the Company.

Requirements of Section 39:

✓ (i) Minimum Subscription [Sec. 39(1)] :

Allotment cannot be made unless:

(a) Amount stated in the prospectus as minimum amount has been subscribed

and

✓ (b) application money for the amount so stated received by the Company.

Example: Issue : 500000 shares of ₹ 10 each @ 200/-

Min. application : 400000 shares
as stated in prospectus.

Application Money = 20% of Issue Price = ₹ 40/-

Case - I : Subscription = 300000 shares = 1.20 Cr. - X

II : " = 390000 " = 1.50 Cr - X

III : " = 420000 " = 1.68 Cr - ✓

IV : " = 401000 " = 1.59 Cr. - X

✓ (i) Minimum Application Money [Sec. 39(2)]:

5% of Nominal amount of the security or such other %age as specified by SEBI.

MCQ: X Ltd. 1 Lac shares. F.V.: ₹ 100, Issue Price 150.

Min. app. Money as per provisions of Sec. 39(2) will be.

(a) ₹ 100

(b) ₹ 150

(c) ₹ 5 ✓

(d) ₹ 7.50

✓ (ii) Refund of application Money [Sec. 39(3) and Rule 11]

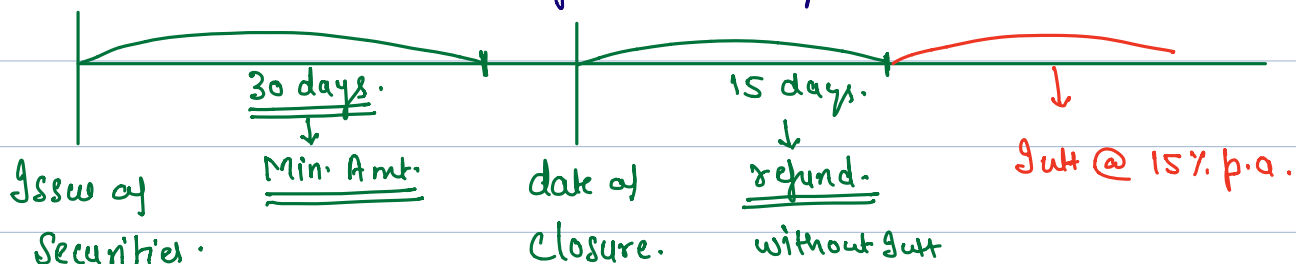
If minimum amount has not been subscribed and application money not recd. within 30 days from date of issue.

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Amount received shall be repaid within 15 days from the closure of the Issue, to the Bank A/c from which subscription was remitted

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If not paid, directors who are Officers in default, are liable to repay the money with Interest @ 15% p.a.



(iv) Return of Allotment: [Sec. 39(4) and Rule 12]

- to be filed with Registrar
- within 30 days of allotment
- in form PAS-3
- along with
 - list of allottees (including their name, address and occupation)
 - No. of securities allotted.
- List of allottee shall be certified by signatory to form PAS-3

(v) Penalty for non-compliance: [Sec. 39(5)]

- Default :- Refund of application Money
 - filing of return of allotment
- To whom - Company and officer in default
- Quantum - ₹ 1000 per day, during which such default continues

OR

₹ 1 lac, whichever is less.

Homework: Explain the provisions of Companies Act, 2013 w.r.t. filing of return of allotment w.r.t. public issue of securities and the consequences if return of allotment not filed with the Registrar.

VI. Securities to be dealt with in Stock Exchange: Sec. 40 + Rule 13

Imp.

(A) Listing of Securities: Sec. 40(1) and 40(2)

- (i) Every company making public offer, before making of public offer, shall make an application to ≥ 1 recognised stock exchange, to obtain permission for listing.
- (ii) Prospectus shall state the name of stock exchange to which application is made.
- (iii) Allotment made without permission shall be void.

(B) Use of application money: Sec. 40(3)

Money received on application shall be kept in a separate bank account and shall be utilised for

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| (i) adjustment against allotment of securities | | (ii) Refund / repayment (if company is not able to allot the securities) |

(C) Penalty: Sec. 40(5)

(i) Default: Non compliance of Sec. 40

(ii) Quantum: Company: ₹ 5 Lakh to ₹ 50 Lakh

Officer in: ₹ 50,000 to ₹ 3 Lakh. ~
default

Imp:
(d)

Underwriting Commission: Sec. 40(6) and Rule 13

- A company may pay underwriting commission subject to Conditions as stated in Rule 13.
- Conditions as stated in Rule 13 of Companies (PAs) Rules, 2014 are:

(a) Payment of such commission is authorised by AOA.

(b) Commission may be paid out of [Proceeds of the Issue
Profit of the Company.

(c) Rate of Commission:

(i) Shares: 5% of Issue Price or rate authorised by Articles, whichever is lower.

(ii) Debⁿ: 2.5% of Issue Price or rate authorised by Articles, whichever is lower.

(d) Disclosure: Prospectus shall disclose the following:

✓ (i) Name of Underwriters

✓ (ii) No. of securities to be underwritten or

subscribed by the underwriters.

(iii) Rate and commission payable to underwriters.

✓ (e) Commission shall not be payable on securities which are not offered to public.

✓ (f) Copy of contract for payment of commission is to be delivered to Registrar at the time of filing of prospectus for registration.

Ex.

Rate of Underwriting Commission

	Contract	Articles	Allowed
Case - I	5% of Issue Price (Shares)	3% of Issue Price (Shares)	3%
Case - II	3% of Issue Price (Share)	5% of Issue Price (Share)	3%
Case - III	6% of Issue Price (Share)	6% of Issue Price (Share)	<u>5%</u> [Articles - ultra vires]
Case - IV	3% of Issue Price (deb ⁿ)	1% of Issue Price (deb ⁿ)	1%

Conclusion:

Lower of →

Shares	Deb ⁿ
→ % age specified in Articles	
→ % age " in Contract	
→ 5% (Share)	2.5% (deb ⁿ)

Home work: Revision of Sec. 39 and 40.