

## 4<sup>th</sup> semester

# Company law and secretarial practice

## Unit 4

### Issue of shares

#### Concept and meaning

The issue of shares is the procedure in which enterprises allocate new shares to the shareholders. Shareholders can be either corporates or individuals. The enterprise follows the rules stipulated by Companies Act 2013 while circulating the shares. The Issue of Prospectus, Receiving Applications, Allocation of Shares are 3 key fundamental steps of the process of issuing the shares.

A noticeable feature of the company's capital is that the amount on its shares can be progressively collected in simple instalments that are spread over a time frame relying upon its enhancing financial obligation. The 1st instalment is collected with the application and is hence, called as application money, the 2nd is on allocation (termed as allocation or allotment of money), and the 3rd instalment is known as a 1st call, 2nd call and so on. The word-final is suffixed to the final instalment. This procedure, in no way, prevents an enterprise from calling the entire amount on shares during the period of application.

#### ➤ Process of issue of shares

The significant steps in the process of issue of shares are given below :

- **Issue of Prospectus:** The enterprise initially issues the prospectus to the public generally. The prospectus is an appeal to the public that a new enterprise has come into the presence and it would require funds for operating the trading concern. It comprises of complete data regarding the enterprise and the way in which the money is to be collected from the prospective investors.
- **Receipt of Applications:** When the prospectus is circulated to the public, prospective investors contemplating to sign up and subscribe the share capital of the enterprise would make an application along with the application money and deposit it with a scheduled bank as mentioned in the prospectus.
- **Allocation of shares:** Once the minimum subscription has been done, the shares can be allocated. Normally, there is always oversubscription of shares, so the allocation is done on pro-rata ground. Letters of Allotment are sent out to those people who have been

allocated their part of shares. This results in an authentic contract between the enterprise and the claimant, who will now be a part-owner of the enterprise.

### ➤ Types of issue of shares

There are a number of ways in which the shares of a company can be issued, as discussed as



below:

1. **Public Issue:** Public issue or public offering refers to the issue of shares or convertible securities in the primary market by the company's promoters, so as to attract new investors for a subscription. In a public issue, the shares are offered for sale in order to raise capital from the general public, for which the company issues a prospectus. The investors who want to subscribe for the shares make an application to the company, which then allots shares to them. The entity which makes an issue is called an Issuer.

- **Initial Public Offer**

Otherwise called an IPO, as its name suggests it is the sale of company's shares to the public at large for the very first time. It is an offer in which an unlisted or privately held company makes a fresh issue of shares or convertible securities, or an already listed company makes an issue of existing shares or convertible

securities, for the first time to the public at large. In this way the unlisted or budding company lists its shares in the recognized stock exchange and goes public, to raise funds for running the business. On the other hand, established entities make IPO facilitate owners to sell some or all of their ownership to the public.

- **Further Public Offer**

If an already listed company, which has gone through an IPO offers new or in better words, additional shares to the public for sale, so as to expand their equity base or pay off debts, it is known as Follow-on Public Offer or Further Public Offer (FPO)

2. **Right Issue:** In a right issue, shares or convertible securities are offered to the existing shareholders at a concessional rate, on a stipulated date, fixed by the company itself. The main aim of issuing right shares is to raise additional funds by offering shares to the existing equity shareholders, in the proportion of their holdings, rather than making a fresh issue.
3. **Composite Issue:** A composite issue is one in which an already listed company offers shares on the public-cum-rights basis and makes concurrent allotment of the shares.
4. **Bonus Issue:** As the name itself suggests, it is the free additional shares distributed to the current shareholders in the proportion of the fully paid-up equity shares held by them on a particular date. The issue of these shares is made out of the company's free reserves or securities premium account.
5. **Private Placement:** If a company offers shares to a selected group of investors which can be mutual funds, banks, insurance companies, pension funds and so forth, to raise capital, is called private placement.
  - **Preferential Issue:** Preferential allotment is one in which a publicly listed enterprise allots shares to a selected group of investors such as individuals, venture capitalists, companies on preferential basis.
  - **Qualified Institutional Placement (QIP):** If a listed organization offers equity shares or non-convertible securities to a qualified institutional buyer for sale to raise capital. Here qualified institutional buyer includes mutual funds, venture capital fund, public financial institutions, insurance funds, scheduled commercial bank, pension funds, etc.
  - **Institutional Placement Programme (IPP):** If a publicly listed company makes a follow-on offer of equity shares or the promoters offers shares for sale, wherein the

shares are allotted to the QIB's only, with the aim of achieving minimum public shareholding.

The company issues share in order to raise funds from the general public, so as to apply these funds in business operations. However, they can also be issued to serve other purposes also, as the money can be utilized in repaying debts, funding a new project, acquiring another company.

## Share allotment

### Meaning

Share allotment is the creation and issuing of new shares, by a company. New shares can be issued to either new or existing shareholders. Share allotment can have implications for any existing shareholders share proportion. Typically, new shares are allotted to bring on new business partners.

### Process of share allotment

Any issuing of new shares needs to be formally actioned by you as the director. You will need to complete the following steps:

#### 1. Confirm your shareholdings and shareholders ID

Naturally, before you allot any new shares you need to confirm your current shareholdings, the number of shares you wish to introduce, as well as the resulting share structure of your shareholders. When it comes to allotting shares to a new shareholder you will also need to confirm their name, date of birth, nationality, residential address, proof of ID and relationship to the other shareholders in your company.

#### 2. Hold a board meeting

Shares must be allotted through a board agreement. A board meeting should be held to agree any changes to your company's share structure. Be sure to keep detailed minutes of your meeting that clearly display the revised share structure and share holdings. These minutes will need to be kept safe with your company records, they'll later be used when updating Companies House and also provide a solid audit trail. If you're an inniAccounts client, we'll send you a template for the minutes of your meeting.

#### 3. Update Companies House with the new allotment of shares (SH01)

A statement of capital (SH01) form must be completed and delivered to Companies House within one month of any allotment. The SH01 form can be completed on the Companies House website. This form updates Companies House on the structure of your company's shares. The form does not include details of the shareholders merely the shares themselves, any changes will need updating in your company's confirmation statement as discussed below.

#### **4. Issue new share certificates**

Having agreed your share structure, you will need to issue new share certificates detailing the shareholdings – these will render any previous share certificates as effectively cancelled. If you are an in Accounts client, we will send you a template share certificate to be signed and dated.

#### **5. Update your company's confirmation statement (CS01) with the new share totals**

You need to update your company's confirmation statement, with Companies House, to show the new share structure within your company. If you have a new shareholder, remember the SH01 form does not include the new shareholder's details; you will need to ensure these are included in your confirmation statement.

If you intend to transfer your newly allotted shares, the confirmation statement can be updated once you have completed all share changes.

## **Rules regarding allotment of shares**

**The following rules regarding allotment of shares are noted:**

### **(a) Application Form:**

A prospectus is an invitation to the public to purchase shares. Naturally, the intending purchaser has to apply in a prescribed form (given in the prospectus) for the purpose which is known as 'application form. Needless to mention that the prospectus fixes the time when the application will be opened and the allotment will be made. Letter of allotment should be sent to the applicant of shares after the allotment is made.

### **(b) Offer and Acceptance:**

We know that membership of a company after purchasing shares is nothing but a contract. The application form which is given by the members is the 'offer' and allotment by directors

is the 'acceptance' of that 'offer' and, similarly, the notice of acceptance which is sent is the 'acceptance of the offer.'

**(c) Conditional offer and Acceptance for 'Offer':**

Usually, the conditions are printed in the application form, e.g., in case of over-subscription of shares, shares will be allotted on pro-rata basis etc. Conditions for acceptance is practically invalid.

**(d) Proper Authority:**

It should be remembered that allotment of shares should always be made by the proper authority e.g., by the board of directors, and allotment made without proper authority is void. Although allotment can be delegated to some persons if the Articles so provide.

**(e) Reasonable Time:**

After receiving the application form allotment should be made as soon as possible by the directors i.e., within a reasonable time. Otherwise, applications for 'offer' will be revoked if such reasonable time expires.

**(f) Fictitious Name:**

Sec. 68A states that any person who

- (i) Makes in a fictitious name for acquiring or subscribing for any share; or,
- (ii) induces a company to allot, register any transfer of shares to him or any other person in a fictitious name shall be punishable by imprisonment up to 5 years.

**Restrictions on Allotment of Shares:**

The following restrictions have been prescribed by the Companies Act regarding allotment of shares:

**(a) Minimum Subscription:**

Sec. 69(1) states that no allotment can be made by the company until the minimum subscription has been received.

**(b) Application Money:**

Sec. 69(3), however, lays down that the amount payable on each share with the application form must not be less than 5% of the nominal value of the shares.

**(c) Money to be Deposited in a Scheduled Bank:**

Sec. 69(4) states that money received from the applicants must be deposited in a Scheduled Bank until the certificate to commence business has been obtained or until the entire amount

payable on applications for shares in respect of the minimum subscription has been received by the company.

**(d) Returns of Money:**

Sec. 69(5) states that if the minimum subscription has not been raised or if the allotment could not be made within 120 days from the date of publication of the prospectus, the directors must return the money received from the applicants. If the money is refunded within 130 days no interest is payable, beyond which the directors are liable to pay interest @ 6% p.a. from the 130th day to the day of repayment.

**(e) Statement in lieu of Prospectus:**

Sec. 70 of the Companies Act states that a public company which has not issued any prospectus must deliver to the Registrar for registration a statement in lieu of prospectus signed by every director or proposed director or his agent in the form prescribed in Schedule III of the Act, at least 3 days before the first allotment of shares.

**(f) Opening of the Subscription List:**

Sec. 72 lays down that no allotment can be made until the beginning of the 5th day after the publication of the prospectus or such later time as may be prescribed for the purposes in the prospectus.

**(g) Revocation of Application:**

Application for shares cannot be revoked until after the expiration of the 5th day after the time of opening of the subscription list except in one case, i.e. if any responsible person gives public notice of withdrawal of the consent to the issue of the prospectus, any applicant can revoke his application.

**Effects of an Irregular Allotment of Shares:**

The following consequences are to be made if the allotment is made in contravention of Secs. 69, 70 and 73, stated earlier:

**(i) Option:**

Sec. 71(1) and (2) states that the allotment becomes voidable at the option of the shareholders. The option to avoid the contract must be exercised within 2 months of holding the statutory meeting or where no statutory meeting is held or where the allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment.

The same can be exercised even if the company is in course of liquidation.

**(ii) Compensation:**

Sec. 71(3) lays down that if any director knowingly or wilfully contravenes the rules or authorizes the contravention, he is liable to pay compensation to the shareholders concerned for any loss or damage suffered by him. But the suit for compensation must be filed within 2 years from the date of allotment.

**(iii) Fine:**

Sec. 72(3) states that the validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section, but,, in the event of any such contravention, the company, a fid every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 5,000.

**(iv) Void:**

If any allotment is made in violation of Sec. 73, the same is treated as void.

## **Forfeiture of shares**

A forfeited share is a share in an enterprise that the owner suffers (forfeits) by failing to meet the buying requisites. Requirements may incorporate paying call money owed or allotment, or transferring shares during a restricted period or avoiding selling. When a share is forfeited, the member no longer owes any balance or profit on the shares, and the shares become the asset of the issuing enterprise.

Some shareholders might fail to pay instalments, viz., allocation of money or call money. In such a scenario :

- Their share will be forfeit, which means that the shareholder's share will be cancelled.
- All the entries associated with the forfeited stocks, apart from those associated with premium, already mentioned in the accounting records must have conversed.
- The share capital account is debited with the amount called-up.

## **Effects of forfeiture of shares**

When the shares have been forfeited, the defaulting shareholder ceases to be member of the company and he loses all rights or interests in his shares. But notwithstanding the forfeiture he remains liable to pay to the company all moneys which at the date of forfeiture were payable by him to the company in respect of the shares.



### **1. Cessation of membership**

A person whose shares have been forfeited ceases to be a member in respect of forfeited shares. This is provided under regulation 32(1) of Table F of schedule 1 of Companies Act, 2013.

### **2. Cessation of liability**

The liability of a person whose shares have been forfeited comes to an end when the company receives the payment in full of all such money in respect of shares forfeited. This is provided in Regulation 32(2) of Table F.

However, notwithstanding the forfeiture of shares, shareholder remains liable to pay to the company all money which, at the date of forfeiture, were payable by him to the company in respect of forfeited shares. Thus, the liability of unpaid calls remains even after the forfeiture of shares.

### **3. Liability as past member**

The liability of a former shareholder remains as a liability of a past member to pay calls if liquidation of the company takes place within one year of the forfeiture.

### **4. Forfeited shares become company's property**

The forfeited shares become the property of the company on forfeiture. Accordingly, these may be re-issued or otherwise disposed of on such terms and in such manner which the board of directors thinks fit. This provided under Regulation 31(1) of Table F.

In the same Regulation clause (2) provides that at any point of time before a sale or disposal of forfeited shares the board may cancel the forfeiture of shares in terms as they think fit.

## **Transfer and Transmission of shares**

### **A. Transfer of shares**

Transfer of shares means the voluntary handing over of the rights and possibly, the duties of a member (as represented in a share of the company) from a shareholder who wishes to not be a member in the company any more to a person who wishes of becoming a member. Thus, shares in a company are transferable like any other movable property in the absence of any expressed restrictions under the articles of the company.

### **Persons involved in the transfer**

- Subscribers to the memorandum.
- Legal Representative, in case of a deceased.
- Transferor.
- Transferee.
- Company (whether listed/ unlisted)

## Procedure for transfer of shares as per the Companies Act, 2013

1. Firstly, the transfer deed needs to be obtained in the prescribed form i.e. Form SH-4, endorsed by the prescribed authority.
2. The instrument of transfer may not be in the prescribed form (Form SH-4) in the following cases:-
  - a. Where a director or nominee transfers shares on behalf of another body corporate under section 187 of the Companies Act, 2013;
  - b. Where a director or nominee transfers shares on behalf of a corporation owned or controlled by the central or state Government;
  - c. Shares transferred by way of deposit as a security for repayment of any loan or advance If they are made with any of the following:-
    - i. State Bank of India; or
    - ii. Any scheduled bank; or
    - iii. Any other banking company; or
    - iv. Financial Institution; or
    - v. Central Government; or
    - vi. State Government; or
    - vii. Any corporation held by the Central or State Government; or
    - viii. Trustees who have filed the declarations.
  - d. For transferring debentures, a standard format can be used as the instrument of transfer.
3. Get the Articles of Association in case of shares, trust deed in the case of debentures and transfer deed registered either by the transferor and the transferee or on their behalf in accordance with the provisions of the Companies Act, 2013.
4. According to Indian Stamp Act and stamp duty notification in force in the state concerned, the transfer deed should need to have stamps. The present stamp duty rate for transfer of share is 25 paise for every one hundred rupees of the value of the share

or part thereof. That means for shares valued Rs. 1050, the stamp duty will be Rs. 2.75.

5. Check that the stamp affixed on the transfer deed is cancelled at the time of or before the signing of the transfer deed.
6. A person who gives his signature, name and address as approval for transfer must see the transferor and the transferee sign the share/debentures transfer deed in person.
7. The relevant share/debenture certificate or allotment letter with the transfer deed must be attached and sent to the company.
8. In case the application made by the transferor, is for partly paid shares, the company has to duly notify the amount due on shares/debentures to the transferee. Also, a no objection from the transferee is required within two weeks from the date of receipt of the said notice.
9. Affix the same value stamp on a written application if signed transfer deed has been lost. In this case, the board may register the transfer on specific terms of indemnity as it thinks fit.
10. If the shares of the company are listed in a recognized stock exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.

#### **Time limits**

- a. A Company having share capital:- The Company shall not register transfer of securities of the Company or member's interest in the Company other than beneficial owners without a proper instrument of transfer within a period of 60 days from the date of execution.
- b. Application by transferor alone:- The transfer shall not be registered until and unless the company gives notice of the application to transferor and transferee gives no objection certificate within 2 weeks from receipt of the notice.
- c. Company shall deliver certificates of all securities allotted/ transferred/ transmitted in the following cases and within the following mentioned time limits:-
  - ✓ In case of subscribers to memorandum – within a period of 2 months from the date of incorporation.
  - ✓ In case of allotment of any of its shares – within a period of 2 months from allotment date.
  - ✓ Receipt by the company of the instrument of transfer/ intimation of transmission – within a period of 1 month from the date of receipt.

- ✓ Allotment of debenture – within a period of 6 months from the date of allotment.

### **Penalties**

For company – Minimum is Rs. 25,000 and maximum is Rs. 5,00,000 For an officer In default – Minimum is Rs. 10,000; and maximum is Rs. 1,00,000

### **Transmission of shares**

A transmission of interest in shares of a company, of a deceased member of the company, made by the legal representative of a deceased member shall be considered as transmission of shares by operation of law. This transmission will be registered by a company in the Register of Members.

For statutory provisions related to Transmission of share one should refer the following sources:

1. Section 56 of **Companies Act, 2013**
2. Provisions given in model articles of association given in Table ‘F’ of Schedule-I  
“Relevant” Text of Section 56 and Rule 11 are reproduced below for ready reference:

### **Transfer and transmission of securities**

**Section 56** (2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an **intimation of transmission** of any right to securities by operation of law from any person to whom such right has been transmitted.

(3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

- a. within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- b. within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
- c. within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
- d. within a period of six months from the date of allotment in the case of any allotment of debenture:

**Provided** that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

(5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

### **Main Provisions related to Transmission of Share**

**1. Person eligible to apply for transmission:** The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. In other words in case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.

**2. Share transfer deed not required for Transmission:** Execution of transfer deed not required in case of transmission of shares. Intimation/application of Transmission accompanied with relevant documents would be enough for valid transmission request.

**Documents required for Transmission of Shares:**In case of transmission of shares by operation of law, it is not necessary to execute and submit transfer deed. A simple application to the company by a legal representative along with the following necessary evidences is sufficient:—

- a. Certified copy of death certificate;
- b. Succession certificate;
- c. Probate;
- d. Specimen signature of the successor.

**4. Liability on shares shall continue:** In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsist, notwithstanding the devaluation of the shares.

**5. Payment of consideration or stamp duty not required:** Since the transmission is by operation of law, payment of consideration or payment of stamp duty would not be required on instruments for transmission.

**6. Time limit for issue of share certificate on transmission (Section-56(4)):** Every company, unless prohibited by any provision of law or of any order of any Court, Tribunal or other authority, shall, within One month deliver, the certificates of all shares transmitted after the application for the registration of the transmission of any such shares received.

**7. Time Limit for Refusal of registration of Transmission:**Provisions related to Refusal of registration and appeal against refusal is given in Section 58 of the **Companies Act, 2013**.Power of refusal to register transmission of shares is to be exercised by the company within thirty (30) days from the date on which the intimation of transmission is delivered to the company.

**8. Time Limit for appeal against refusal to register Transmission by Private Company:**As per section 58(3), the person who gave intimation of the transmission by operation of law,may appeal to the Tribunal against the refusal within a period of thirty (30) days from the date of receipt of the notice from the Company or in case no notice has been sent by the company, within a period of sixty (60) days from the date on which the intimation of transmission was delivered to the company.

**9. Time Limit for appeal against refusal to register Transmission by Public Company:** As per section 58(4), the person who gave intimation of the transmission by operation of law may, within a period of sixty (60) days of such refusal or where no intimation has been received from the company, within ninety (90) days of the delivery of the intimation of transmission, appeal to the Tribunal against such refusal.

**10. Penalty for Non-compliance:** Where any default is made in complying with the provisions related to transmission of shares, the company shall be punishable with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 5,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 1,00,000/-

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**Duties of a company secretary**

**I. Duties of a company secretary in relation to issue of shares**

- a. To make a chronological (i.e., date and time-wise) record of the applications and sending the money to a scheduled bank.
- b. To help the Board of Directors in the act of allotment. If applications for shares are received less than the number of shares offered for sale then there is no problem and all the applicants will get shares allotted to them. But problem arises when more applications have come.

**II. Duties of a company secretary in relation to transfer of shares**

- c. To inspect and to verify-the correctness of the instrument and genuineness of the share certificate. He will issue a Transfer Receipt to the transferee.
- d. To write a letter to the transferor and the transferee each, called the 'notice of lodgment of transfer', inviting objections to the transfer, if any. This is very important particularly when shares are not fully paid.
- e. If no objection is received within two weeks from the sending of above notice, the matter will be placed by the Company Secretary at the next meeting of the Board of Directors for approval or disapproval of transfer. Normally, disapproval is not made unless there are strong reasons in the interests of the company.
- f. Within two months from the approval, the Company Secretary shall issue a new share certificate to the transferee in exchange of Transfer Receipt, remove the name of the transferor from the Register of Members and enter the name of the transferee in it. Instead of issuing a new share certificate the old certificate duly endorsed by the transferor may be given to the transferee.

**III. Duties of a company secretary in relation to forfeiture of shares**

- a. To arrange a Board meeting; to take a decision on forfeiture after the first reminder for payment of call money to defaulting shareholders has been issued.
- b. To issue a second reminder to still defaulting members with a caution that shares may be forfeited if the call money is not paid within a specified period of time.
- c. To have a resolution passed at a Board meeting on forfeiture.
- d. To make necessary changes in the Register of Members and to cancel the share certificates concerned.
- e. In case forfeited shares are re-issued, the Company Secretary has to make further entries in the Register of Members, to issue share certificates to the re-purchasers, and to see that necessary entries are made in the books of account.

