

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

Meaning of Allotment:



Invitation to offer → Offer → Acceptance

↓
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

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

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

MQ: 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

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

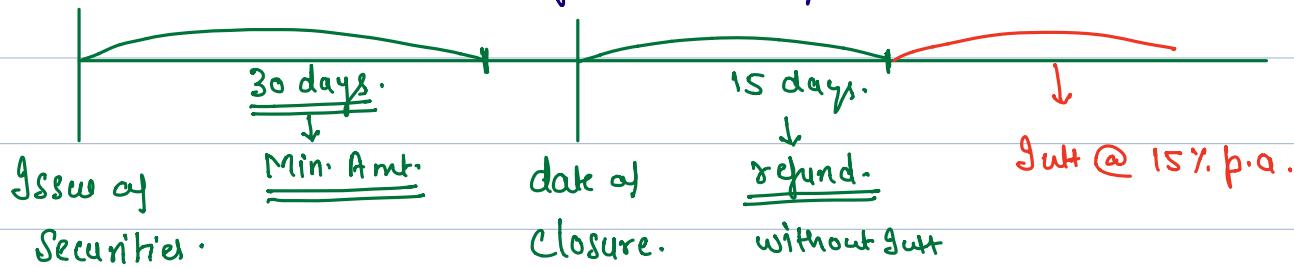
If minimum amount has not been subscribed and application money not recd. within 30 days from date of issue.



Amount received shall be repaid within 15 days from the closure of the issue, to the Bank Ac from which subscription was remitted



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)]

- (i) Default : - Refund of application Money
 - filing of return of allotment
- (ii) To whom - Company and officer in default
- (iii) Quantum - ₹ 1000 per day during which such default

Continued

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

(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

- ↓ ↓
- (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

Ques:

(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) Debt : 2.5% of Issue Price or rate authorised by Articles, whichever is lower.
- (d) Disclosures: 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

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

Conclusion:

Shares **Debⁿ**

✓ Lower of → [Y. age specified in Articles]

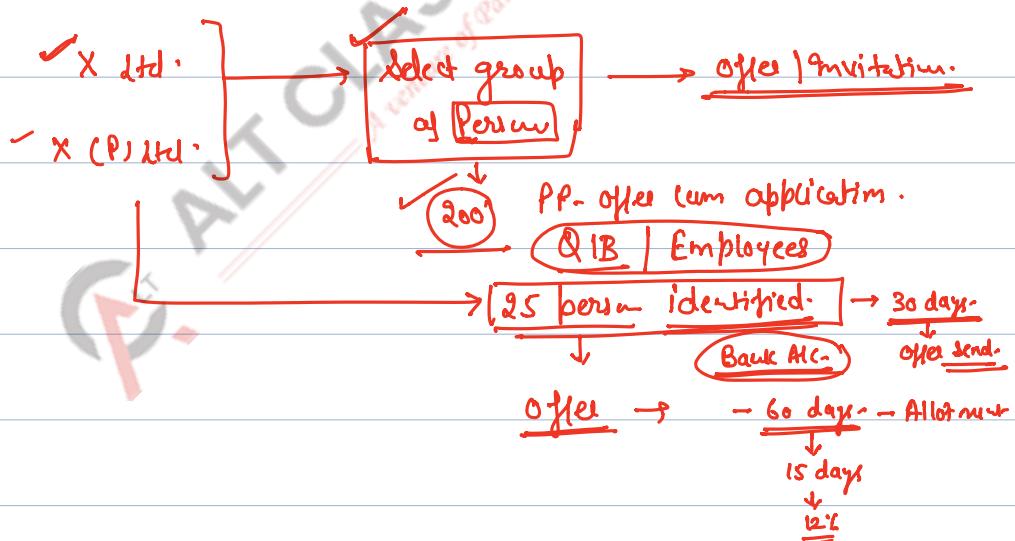
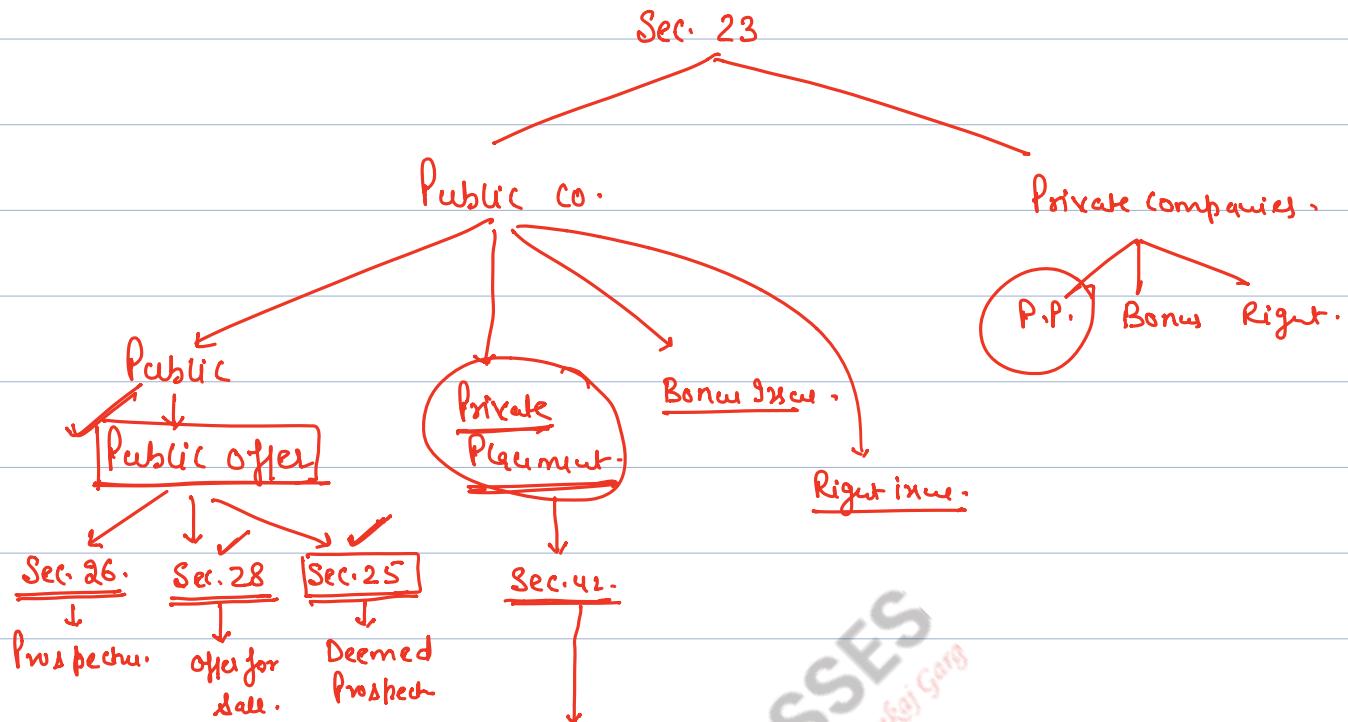
→ Y. age .. in Contract

→ 5% (Shares) 2.5% (Debⁿ)

Home Work :

Revision of Sec. 39 and 40.

VII. Private Placement: Sec. 42 of Companies Act, 2013 and Rule 14 of
Companies (PAs) Rules, 2014



Meaning of Private Placement: Any offer or invitation to subscribe securities

↓

to a select group of persons (identified persons)

↓
through issue of a Private Placement offer cum application which satisfies the conditions specified in Sec. 42.

Conditions for Private Placement: [Sec. 42 read with Rule 14]

(i) Special Resolution: Proposal for private placement has been approved by the shareholders by a Special Resolution.

Note: Notice for special resolution shall provide the details as prescribed under Rule 14.

Ques:
(ii) No. of Persons:

- Private placement offer shall be made to not more than 200 persons in aggregate in a financial year.
- Offer made to QIB and Employees under ESOP shall not be considered in limit of 200 persons.
- Limit of 200 persons would be considered individually for each kind of security. (Equity, preference, debⁿ)

Note: Offer made to > 200 persons will be deemed to be a public offer.

Example:

(i) X Ltd. offers its equity shares to a group of 205 persons, out of which 2 are QIB and 5 are employees to whom shares are offered under ESOP. Determine the no. of persons for the purpose of limit u/s 42. ✓

- (a) 205 (b) 203 (c) 200 (d) 198

(ii) X Ltd. makes a private placement offer to 50 persons to subscribe for its Equity shares. On allotment of these shares, Company offers its debⁿ under private placement offer to 160 persons. Is it a valid offer? Valid

(iii) Manner of issuing Private placement offer:

- Private placement offer cum application shall be in form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent within 30 days of recording of name of such person.
- Private Placement Offer shall not carry right of renunciation (i.e. Offer can be accepted only by the person to whom the offer was made)

(iv) Payment of amount:

- Payment shall be from bank account of the person subscribing the securities.
- Company shall keep the record of bank A/c from where payment for subscription has been received.
- In case of joint holders, amount shall be paid from the bank account of the person whose name appears first in the application.

(v) Limit on fresh offer:

- No fresh offer u/s 42 shall be made unless the earlier allotment have been completed or offer has been withdrawn or abandoned.
- Company may, at any time, make more than one issue of securities subject to maximum no. of identified persons.

Example: Determine the validity of the following private placement (PP) offers by X Ltd. during FY 2021-22:

(i) On 10.04.2021, PP offer for equity shares made to 10 persons.

- Valid
provided no pending
PP allotment / offer

✓(ii) On 15.07.2021, PP offer for debⁿ made to 105 persons.

- Valid
provided no pending
PP allotment / offer

(iii) On 30.10.2021, PP offer for P. shares made to 90 persons.

- Valid
provided no pending PP
allotment / offer

(iv) On 10.01.2021, PP offer for equity shares made to 180 persons (including 15 employees) - deemed to be a public offer

(v) On 15.02.2021, PP offer for P. shares made to 105 persons - Valid (provided no pending PP offer)

(vi) On 05.03.2021 PP offer for debⁿ made to 20 persons. [allotment of PP offer dated 15.02.2021 not yet completed]

(vii) Allotment:

- Company shall allot securities within 60 days of receipt of application money.
- If not allotted, Company shall repay application money within 15 days from expiry of 60 days.
- If not repaid, Company shall be liable to repay the money with interest @ 12% p.a. from expiry of 60th day.

(vii) Use of application money:

- Money recd. on application shall be kept in a scheduled bank A/c.
- Money shall be utilised for
 - |
 - ↓
 - (a) adjustment against allotment of securities
 - or (b) Repayment
(if company is unable to allot the securities)

(viii) Public Advt.: not permitted

(ix) Return of allotment:

- to be filed with the ROC
- in form No P A S-3
- within 15 days from the date of allotment
- Return shall be filed along with a complete list of allottees containing
 - Name, address, PAN, E-mail id of security holder
 - class of security held
 - date of allotment of security
 - no. of securities held, nominal value and amount paid; and
 - particulars of consideration recd. if entire securities are offered for consideration other than cash.



✓ Board General Resolution Meeting SR passed Identify the persons and recording. Offer letter to Identified need. App. Money Allotment
 ✓ PAS-5 persons and recording. → Return of Allotment to be filed with ROC (PAS-3)
 (PAS-4)

Note: Company shall maintain record of the private placements made. in form No. PAS-5.

✓ Form: PAS-1 Sec. 27 (Rule 7) : Advt. of Notice for Varying the terms of Contract or Objects in Prospectus

✓ PAS-2 Sec. 31 (Rule 10) : Information Memorandum

✓ PAS-3 Sec. 39 (Rule 12) : Return of Allotment (Public offer)
 Sec. 42 (Rule 14): " " " (P.P.)

✓ PAS-4 Sec. 42 (Rule 14): P.P. Offer cum application

PAS-5 Sec. 42 (Rule 14): Record of P.P. offers

PAS-6 Sec. 29 (Rule 9A): Reconciliation of Share Capital

Consequences of Non-compliances! - Covered from book. -

Home-work: Complete Revision of Chapter - 3