CA Intermediate (Batch Aug 2024)

Test of Chapter 3 - Prospectus

Maximum Time = 1 hour

Maximum Marks = 35 marks

Part A – 10 Marks - MCQs (Attempt All)

Q1: Which of following shall be considered as securities for purpose of section 23 of the Act;
1. Unit linked insurance policy
2. Actionable claim regarding mortgaged debt
3. Securities issued by National Asset Reconstruction Ltd
(a) only
(b) Both (i) and (iii) only
(c) Both (ii) and (iii) only
(d) None of the (i), (ii), and (iii)

Q2: An issue house (share broker) has issued an advertisement in two leading newspapers for selling a big number of shares allotted to it by a company under a private placement. In which of the following conditions the advertisement will not be deemed as prospectus?
(a) Advertisement was given within six months from the date of allotment
(b) Advertisement was given after six months from the date of allotment and the issue house paid the entire consideration to the company
(c) The issue house did not pay entire consideration to the company till the date of allotment
(d) advertisement was given within three months from the date of allotment.

Q3: A prospectus remains valid for a period of ___ days from the date of which a copy thereof is delivered to the Registrar under the provisions of the Companies Act, 2013
(a) 30
(b) 60
(c) 90
(d) 120

Q4: A shelf prospectus filed with the ROC shall remain valid for a period of:
(a) one year from the date of registration
(b) one year from the date of closing of first issue
(c) one year from the date of opening of first issue
(d) Ninety days from the date on which a copy was delivered to ROC

Q5: Shripad Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.
(a) 9th November, 2019
(b) 24th November, 2019
(c) 9th December, 2019.
(d) 8th January, 2020

Q6: In case of 'offer of sale of shares by certain members of the company', which of the following options is applicable:
(a) The provisions relating to minimum subscription are not applicable
(b) Entire minimum subscription amount is required to be received within three days of the opening date
(c) 25% of the minimum subscription amount is required to be received on the opening date and the remaining 75% within three days thereafter
(d) 50% of the minimum subscription is required to be received by the second day of the opening date and the remaining 50% within next three days after the second day

Q7: How much Security Deposit an unlisted public company is required to maintain, at all times, with the respective depository when it dematerializes its securities.

(a) Equal to not less than one year's fees payable to the depository
(b) Equal to not less than two years' fees payable to the depository
(c) Equal to not less than two and a half years' fees payable to the depository
(d) Equal to not less than three years' fees payable to the depository

Q8: Criminal liability under section 34 for misstatement in prospectus may be avoided if -

1. the consent to become director was withdrawn
2. prospectus was issued without his knowledge
3. misstatement was immaterial
4. had reasonable ground to believe in truthfulness
5. it was based on statement of expert

(a) 3 & 4
(b) 1; 2; 3; 4 & 5
(c) 1; 2 & 5
(d) 3; 4 & 5

Q9: Which of the following statement is contrary with the provisions of the Companies Act; 2013?

(a) a private company can make a private placement of its securities
(b) company has to pass a special resolution for private placement
(c) Minimum offer per person should have Market Value of 20,000
(d) a public company can make a private placement of its securities

Q10: The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is:

(a) Three days before the delivery of the prospectus for registration
(b) At the time of delivery of the prospectus for registration
(c) Three days after the delivery of the prospectus for registration
(d) Five days after the delivery of the prospectus for registration

<u>Part B – 25 Marks (Subjective)</u>

<u>Question 1 is compulsory</u>

<u>Attempt any 4 out of remaining 5</u>

1. The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ ₹ 100 each on 1^{st} April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15^{th} April, 2022 but did not make an allotment of shares till 31^{st} July, 2022. Instead, during this interim period, the company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company.

(5 marks)

2. The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

(5 marks)

3. An allottee of shares in a company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them and so director is not liable. State whether the director will be liable for the misstatements. Also specify the circumstances, if any, in which the director can escape his liability for the misstatement in the prospectus.

(5 marks)

4. TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

(5 marks)

5. Explain the various instances which make the allotment of securities as irregular allotment under the provisions of Companies Act, 2013.

(5 marks)

6. ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

(5 marks)

CA Intermediate (Batch Aug 2024)

Solution of Test of Chapter 3 – Prospectus

Maximum Time = 1 hour

Part A - MCQ

Q1.	c
Q2.	b
Q3.	c
Q4.	c
Q5.	c
Q6.	a
Q7.	b
Q8.	a
Q9.	c
Q10.	b

<u>**Part B - Subjective**</u>

1. As per <u>**section 42**</u> of the Companies Act, 2013, a company making an offer or invitation under private placement
   → shall allot its securities within <u>**60 days**</u> from the date of receipt of the application money for such securities and
   → if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within <u>**15 days**</u> from the expiry of 60 days and
   → if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of <u>**12% per annum**</u> from the expiry of the 60^{th} day.

   It is provided that the monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:

   (1) for adjustment against allotment of securities; or

   (2) for the repayment of monies where the company is unable to allot securities.

   In the instant case, application money from the members was received on 15^{th} April, 2022 and company did not make an allotment of shares till 31^{st} July, 2022 i.e. after expiry of the period of 60 days. Hence, the <u>**company is liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60^{th} day**</u>.

   Therefore, the objection raised by the members for non- allotment of shares/ non-refund of share application money within the statutory time limit is valid. However, their claim to pay interest @ 15% is not valid.

   Also, the application money cannot be used for the payment of dividends by the company.

2. As per <u>**section 26(1)**</u> of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be <u>**dated and signed**</u> and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.

   Provided that until the Securities and Exchange Board specifies the <u>**information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board**</u> under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

   According to clause (c) of section 26 (1), the prospectus shall make a **declaration about the compliance of the provisions** of the Companies Act, 2013 and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

   Accordingly, the Board of Plum Limited which proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government to comply with the above stated provisions and make a declaration about such compliance.

3. Yes, the Director shall be held liable for the false statements in the prospectus under <u>**sections 34 and 35**</u> of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such misstatements.

   The only situations when a director will not incur any liability for misstatements in a prospectus are as under –

   (i) No <u>criminal liability</u> under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

   (ii) No <u>civil liability</u> for any <u>misstatement</u> under section 35 shall apply to a person if he proves that -

   (1) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(2) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
(3) That he relied on statement of an expert who has given his written consent and he had reasonable ground to believe that the person making the statement was competent to make it.

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for misstatements in the prospectus. However, he can escape the liability if he falls under any of the above-mentioned safeguards.

4. As per the provisions of **Section 40** of the Companies Act, 2013 the conditions for the payment of underwriter's commission are as follows

A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in **Rule 13** of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission -

1. the payment of such commission shall be authorized in the company's articles of association;
2. the commission may be paid out of proceeds of the issue or the profit of the company or both;
3. Rate of commission - The rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars -
   a. the name of the underwriters;
   b. the rate and amount of the commission payable to the underwriter; and
   c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

5. **Irregular allotment** - The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfilment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

6.

Information Memorandum together with Shelf Prospectus is deemed Prospectus.

The expression "**shelf prospectus**" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [**Section 31**]

Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage –

a. of the first offer of securities included therein which shall indicate a period not exceeding 1 year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

b. in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, No further prospectus is required for issue of securities.

A company filing a shelf prospectus shall be required to file an **information memorandum** containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within 1 month, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Where an information memorandum is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is **correct**.

CA NOTES COMMUNITY NETWORK

Click on Icon	QR CODE	LINK
Join what's App group		CLICK HERE
Join Telegram Channel		CLICK HERE
Subscribe On Youtube		CLICK HERE
Follow us On Instagram		CLICK HERE

BE A PART OF CNC FAMILY

CNC – CA NOTES COMMUNITY

Mail at (for complaints/feedback) – canotescommunity@gmai.com