

Chapter III

PROSPECTUS AND ALLOTMENT OF SECURITIES

- 1 A prospectus shall be ~~filed with the Registrar~~ ^{given to public} within 90 days after the date on which a copy of the prospectus is delivered to the Registrar.
- 2 A private company cannot issue securities by the way of public offer.
- 3 persons is disqualified from acting as an 'Expert' with reference to issue of prospectus if related to (a) promotion or formation of Co. (b) management of company.
- 4 **Offer of Sale of Shares by Certain Members of Company [Sec. 28]** – Where certain members of a company propose whole or part of their holding of shares to the public, in consultation with the BOD and through company.
- 5 Sec. 28 is **not applicable** the provisions relating to minimum subscription and application money.
- 6 **Public offer of Securities to be in Dematerialised Form [Sec. 29]**
 - a. every company making public offer ; and
 - b. unlisted public ^(listed Co) **Company** companies as may be prescribed,Shall issue the securities **only in dematerialised** form
- 7 **The shelf prospectus shall remain valid for period not exceeding 1 yr from the date of opening of the first offer opening/closing.**

(31)

32 8 The term Red herring Prospectus means a prospectus **which does not include** complete particulars of the **quantum or price** of the securities included therein.

32 9 A company proposing to issue a red herring prospectus shall file it with the Registrar **at least 3 days prior** to the opening of the offer. share application form

33 10 No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged **Prospectus**.

11 Unless contrary is proved, it shall be **presumed that** allotment or agreement to allot the securities as made with a view to the securities being **offered for sale to the public** if it is shown:

sec 25 (a) that the offer for sale to the public was made **within 6 months** of allotment or agreement to allot; or

(b) that the **whole consideration had not been received** by the company **when the offer for sale to the public** was made.

12 The document by which the offer is made, must be signed:

25 (i) In case of company : **by 2 directors** of the company;

(ii) In case of firm: **by at least half** of the partners in the firm. (includes LLP)

13 Name Case laws –

a. **If a person buys shares from another shareholder or from open market/secondary market / stock exchange, he cannot claim damages.** – Peek vs Gurney.

b. Suppression of material fact, however remote will make the prospectus misleading – Rex vs Kylsant.

c. Remedy is available to original allottee only – Peek vs Gurney

d. Remedy is available to such allottee to whom personal loss has been caused – Deery vs Peck.

36 14 Any person or group of persons or association of persons may file a suit or any class (group) **action** may be taken u/s 34 or 35 or 36

15 Protection against criminal liability – (sec 35)

- If he proves that such statement or omission was immaterial; or
- He had reasonable grounds to believe upto the time of issue of the prospectus that the statement was true or the inclusion or omission was necessary.

16 Protection against civil liability (sec 36)

- If he proves that, he withdraw his consent before the issue of the prospectus
- that the prospectus was issued without his knowledge, and that on becoming aware of its issue, he **immediately gave a** public notice that it was issued without his knowledge or consent.
- A person who makes any statement on the basis of report of an expert.

17 The application money on every security shall not be less than at least: 5% of nominal value.

18 Minimum subscription (30-15-15)

- If the amount stated in the prospectus as the minimum subscription is not subscribed or the sum payable on such application is **not received within** 30 day **of issue of prospectus**, then, such money shall be **repaid**

within a period of 15 days from the closure of the issue.

b. If such money is not repaid within such period, the directors of the company who are officers in default shall jointly and **severally be liable to repay** that money along with interest at the rate of 15% p.a.

19 Whenever a company having a share capital makes any allotment of its securities, the company shall file a **return of allotment** with Registrar in Form **PAS-3** within 30 days from allotment, along with the prescribed fees

20 Every company shall, **before making public offer, make an application to one or more** stock exchange and obtain permission for the securities to be dealt with in such stock exchange. *(If a single S.E. refuse, allotment invalid)*

21 All monies received on application from the public for subscription to the securities shall be kept in a **separate bank account in a scheduled bank** and shall be utilised only for:
 (i) Allotment
 (ii) refund.

Underwriting Commission [Sec. 40(6) & Rule 13]		
Source	The commission may be paid out of proceeds of the <u>issue</u> or out of the <u>profits</u> of company or both.	
Rate of commission	Types of securities issued	Rate of commission
	Shares (whether equity or preference)	Lower of- (i) <u>5%</u> of issue price of shares; or

		(ii) rate authorised by the articles
	Debentures	Lower of- (i) <u>2.5%</u> of issue price of debentures; or (ii) rate authorised by the articles
Other compliances	<p>(i) No underwriting commission shall be paid on securities which are <u>not offered to public</u>.</p> <p>(ii) A copy of the underwriting agreement shall be delivered to the Registrar <u>at the time of filing</u> of a copy of the prospectus with the Registrar.</p>	

22 Private Placement (Sec. 42)

(i) Maximum 200 in a F.Y. [individual limit for each and of security (equity share, preference share or debenture.)]

excluding:

- (a) Qualified institutional buyers; and
 (b) **Employees** of the company who have been offered securities under a scheme of ESOP u/s 62(1)(b).

23 No fresh offer unless

- a. the allotments have been Completed; or
 b. such offer or invitation has been withdrawn or abandoned

24 Time Limit

- a. A company making private placement shall **allot the securities within 60 days of receiving the application money** for the securities.
- b. If the company is not able to allot the securities within the said period of 60 days, it shall, **within next 15 days**, **repay** the application money to the applicants.
- c. If the company fails to repay the application money within the said period of 15 days, it shall be liable to **pay interest @ 12 % per annum from the expiry of 60th day.**

25 The company is prohibited from providing '**Right of renunciation**' and therefore, the letter of offer and the application form need not include any such clause.

②6. No private placement to:
① B.C ② individual of countries sharing borders with India.
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