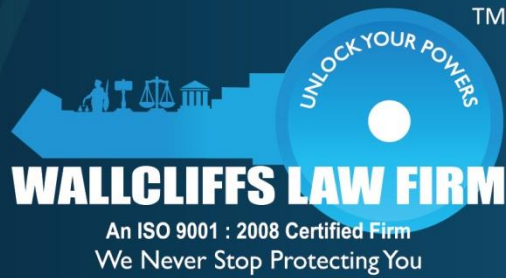


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Q&A



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THE COMPANIES ACT, 2013

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CHAPTER - III

PROSPECTUS AND ALLOTMENT OF SECURITIES

PART - I

PUBLIC OFFER (SEC.23 - 41)

Q1. What is a public offer and private placement under this Act?

- A public company may issue securities,
 1. To public through a prospectus which is referred to as public offer.
 2. Through private placement by complying with the provisions of Part II.
 3. Through a rights issue or a bonus issue and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992.
- A private Company may issue securities,
 1. By way of rights issue or bonus issue.
 2. Through private placement by complying with the provisions of Part II of this Chapter. **(Sec.23)**

Q2. What are the matters to be contained in the prospectus?

Every prospectus issued by the public company to its formation shall be dated and signed and shall,

1. Names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, underwriters, and such person as may be prescribed.
2. Dates of the opening, closing of the issue, and declaration about the issue of allotment letters and refunds.
3. A statement by the Board of Directors in case of separate bank account and disclosure of all monies including utilized and unutilized monies out of the previous issue.



4. Details about the underwriting of the issue.
5. Consent of the directors, auditors, bankers to the issue, expert's opinion, and other persons.
6. The authority for the issue and the details of the resolution passed
7. Procedure and time schedule for allotment and issue of securities and issue of securities.
8. Capital structure of the company.
9. Main objects of the public offer, terms of the present issue.
10. Particulars relating to,
 - 1) Management perception of risk factors.
 - 2) Gestation period of the project.
 - 3) Extent of progress made in the project.
 - 4) Deadlines for completion of the project.
 - 5) Any litigation or legal action pending or taken by a government department or a statutory body during the last five years.
 - 6) Minimum subscription amount payable by way of premium or issue of shares than on cash.
 - 7) Details of directors including their appointments, remuneration, and particulars of interest.
 - 8) Financial reports for the calculation relating to profit and losses for each of the five financial years. **(Sec.26)**

Q3. What is a shelf prospectus?

- Any class or classes of the company may file a shelf prospectus with the Registrar during the first offer of securities.
- It shall not exceed one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities.
- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts.
- The financial position of the company that occurred between the first offer of securities shall be informed to the Registrar.



- Where a company or any person has received applications for the allotment of securities, the company or other person shall intimate the change to such applicants.
- If the information is filed, every time an offer of securities is made, such memorandum together with the shelf prospectus shall be deemed to be a prospectus. **(Sec.31)**

Q4. What is red herring prospectus?

- A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- A red herring prospectus shall carry the same obligation which is applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- On the closing of the offer of securities, the prospectus stating the total capital raised, whether by way debt or share capital and the closing price of the securities and other details which are not included in the red hearing prospectus shall be filed with the Registrar and the Securities and Exchange Board. **(Sec.32)**

Q5. What is the procedure to issue application forms for securities?

- The application for the purchase of any of the securities of a company shall not be issue unless such form is accompanied by an abridged prospectus.
- The application shall not be an issued under the following conditions,
 - a) In connection with a bonafide invitation to a person to enter into an underwriting agreement.
 - b) The securities which were not offered to the public.
 - c) On request of any person, a copy of the prospectus shall be furnished before the closing of the subscription list and the offer.
 - d) If a company makes any default, it shall be liable to a penalty of fifty thousand rupees for each default. (Sec.33)**



Q6. What is criminal liability for mis-statement in the prospectus?

- Where a prospectus, issued, circulated, or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter.
- Which the same is likely to mislead, every person who authorizes the issue of such prospectus shall be liable.
 - a) Such statement or omission was immaterial or,
 - b) There is reason to believe and up to the time of issue or,
 - c) The prospectus believes that the statement was true or that inclusion or omission was necessary.

Q7. What amounts to civil liability for misstatement in the prospectus?

- If the person has subscribed for securities of a company acting on any statement included or omission of any matter in the prospectus which is misleading and has sustained any loss or damage as a consequence, the company and every person who,
 - a) Is director of the company at the time of the issue of the prospectus.
 - b) Has authorised himself to be named and is named in the prospectus as a director of the company or,
 - c) Has agreed to become director either immediately or at an interval of time.
 - d) Is a promoter of the company.
 - e) Has authorised the issue of the prospectus.
 - f) Is an expert.
- Any person liable shall be punished to pay compensation to every person who sustained such loss or damage.
- The person shall not be liable if he proves,
 - a) That he has 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
 - b) The prospectus was issued without his knowledge or consent and on becoming aware of its issue gave a reasonable public notice that it was issued without his knowledge or consent.



- Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other purpose for any fraudulent purpose, every person shall be personally responsible without limitation of liability, for all or any of the losses or damages that may be incurred by any person who subscribed to the securities on the basis of such prospectus. **(Sec.35)**

Q8. What is the punishment for fraudulently inducing persons to invest money?

- Any person who knowingly makes any statement, promise or forecast which is false, deceptive, or misleading, or deliberately conceals any material facts to induce another person to enter into or to offer to enter into,
 - a) Any agreement for the purpose of acquiring, disposing of, subscribing for, or underwriting securities, or
 - b) Any agreement for the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities, or
 - c) Any agreement to obtain credit facilities from any bank or financial institution.
- The person liable under the above grounds shall be punished under Section 447 of this Act. **(Sec.36)**

Q9. What is the punishment for personation for the acquisition of securities?

- Any person liable under the following acts shall be punishable under Section 447 of this act,
 - a) Makes or abets making an application in a fictitious name to a company for acquiring or subscribing for its securities, or
 - b) Makes or abets making of multiple application to a company in a different name or in different combination of his name for acquiring or subscribing for its securities, or
 - c) Induces directly or indirectly a company to allot, or register any transfer of securities to him or to any other person in a fictitious name.



- It shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
- Where a person has been convicted, the Court may also order disgorgement of gain and seizure and disposal of the securities in possession of such person.
- The amount received through disgorgement or disposal of securities shall be credited to the investor Education and Protection Fund. **(Sec.38)**

Q10. What is the procedure for the allotment of securities by a company?

- The allotment of securities shall not be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount have been paid to and received by the company by cheque or other instruments.
- The amount payable on security shall not be less than five percent of the nominal amount of the security.
- If the stated minimum amount has not been subscribed and the sum payable on the application is not received within a period of thirty days from the date of the prospectus, the amount shall be returned within such time.
- If the company is having a share capital that makes any allotment of securities, it shall file with the Registrar a return of allotment.
- On default, the company and its officer who is in default shall be liable to a penalty.
- For each default, the fine may extend to one thousand rupees for each day during which such default continues or one lakh. **(Sec.39)**

CHAPTER - IV

SHARE CAPITAL AND DEBENTURES (SEC.43 - 73)

Q11. What are the kinds of share capital?

The share capital of a company limited by shares shall be of two kinds. They are,



- a) Equity share capital which refers to any company limited by shares, means all share capital which is not preference share capital.
 - i. With voting rights, or
 - ii. With differential rights as to dividend, voting, or prescribed rules.
- b) Preference share capital with reference to any company limited by shares which means that part of the issued share capital of the company carries or would carry a preferential right. **(Sec.43)**

Q12. When did the certificate of shares issued by the Company?

- A certificate issued under the common seal or signed by two directors or by a director and the company secretary specifying the shares by any person shall be prima facie evidence of the title of the person to such shares.
- A duplicate certificate of shares may be issued, if a
 - a) It is proved to have been lost or destroyed, or
 - b) It has been defaced, mutilated, or torn and is surrendered to the company.
- The articles of a company, the manner of issue of a certificate of shares or the duplicate, the form of certificate, the particulars to be entered in the register of members, and other matters shall be prescribed.
- Where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
- If a company with the intention to defraud issues a duplicate certificate of shares, it shall be punishable with a fine not less than five times the face value of the shares involved in the issue of a duplicate certificate. **(Sec.46)**

Q13. What are voting rights under this Act?

- Every member of a company limited by shared and holding equity share capital shall have a right to vote on every resolution place before the company.
- The member voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.
- Every member of a company limited by shares and holding any preference share



capital shall have a right to vote only on resolution placed before the company.

- Any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company. The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital of the equity shares to the paid-up capital of the preference shares.
- The dividend of a class of preference shares has not been paid for a period of two years or more, such class of preference shares shall have a right to vote on all the resolutions placed before the company. **(Sec.47)**

Q14. What are the limitations to the issue of shares at discount?

- A company shall not issue shares at a discount,
 - a) Any share issued by a company at a discounted price shall be void.
 - b) Where a company contravenes the provision, the company shall be punishable with a fine which is not less than one lakh rupees which may extend to five lakh rupees.
 - c) Every officer who is in default shall be punishable with imprisonment extend to six months or with a fine which shall not be less than one lakh rupees extend to five lakh rupees. **(Sec.53)**

Q15. What is the procedure to issue sweat equity shares?

- A company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled.
 - a) The issue is authorized by a special resolution passed by the company.
 - b) The resolution specified the number of shares, the current market price, and the class or classes of directors or employees to whom such equity shares are to be issued.
 - c) Not less than one year from the date of such issue elapsed such the date on which the company had commenced business.
 - d) Where the equity shares of the company are listed on a recognized stock



exchange, the sweat equity shares are issued and if they are not listed, the sweat equity shares are issued.

- e) The rights, limitations, restrictions, and provisions applicable to equity shares shall be applicable to the sweat equity shares and the holders of such shares shall rank pari passu with other equity shareholders. **(Sec.54)**

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