

“Allotment of Shares”

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INTRODUCTION

An allotment of shares is wherever the administrators would like to allot further shares during a company. As this might impact on existing shareholders, there are numerous protecting provisions that has got to be complied with. An allotment of shares could appear to be a straightforward proposition, however there are pitfalls for the gullible. The note below sets out the broad method however is for info solely and may not be relied upon as legal recommendation.¹

An allotment of shares might be conducted for a variety of reasons, such as to raise money for the company, introduce new investors, convert loans to share capital, create a golden share, put a group structure in place, fund a redemption of shares or to implement a bonus issue of shares. Directors and existing shareholders are often confused by the concept of allotment and run into problems when attempting to give shares to new or existing shareholders. Without the required knowledge, the company may allot shares that do not exist or potentially allot an unsuitable class of share. In addition to company secretarial issues, tax considerations can come into play. Where shares are issued below market value, there may be capital gains tax implications for existing company shareholders (as they are essentially giving away value in the company) and potential capital acquisition tax implications for the new shareholder(s).² The concept of allotment can be confusing, and without the required knowledge, a company may allot shares that don't exist or is an unsuitable class of shares. Offers for shares are made on application forms supplied by the company. When an application is accepted, it is an allotment. A valid allotment has to comply with the requirements of the Act and principles of the law of contract relating to acceptance of offers.

EXPLICATION

Allotment is the process by which members take shares from a company is the issue of shares; this ends with allotment, when individual shares are assigned to particular holders. A previously unissued share is allotted when a person acquires an unconditional right to be entered in the register of members in respect of that share.³

The terms "allotting shares" and "issuing shares" are often used interchangeably. In some cases, particularly when shares are created by a public company, there may be a difference. Share allotment, strictly, is the allocation of the right to certain shares to particular applicants for them. Such "allottees" may be sent allotment letters (which may be renounceable in favour of others), and

¹ <http://www.ehlsolicitors.co.uk/wp-content/uploads/2014/05/Allotment-of-shares.pdf>

² <https://omnipro.ie/advisory/allotment-of-shares/>

³ <https://www.informdirect.co.uk/shares/why-issue-shares/>

the actual issue of the shares occurs later. In most private companies allotment and issue will be the same process. A company may allot shares when it is first set up or at any time during its lifetime in order to raise share capital and/or introduce new shareholders. Allotment of shares the process by which members take shares from a company is the issue of shares; this ends with allotment, when individual shares are assigned to particular holders. A previously unissued share is allotted when a person acquires an unconditional right to be entered in the register of members in respect of that share. The terms "allotting shares" and "issuing shares" square measure usually used interchangeably. In some cases, significantly once shares square measure created by a public company, there is also a distinction. Share allotment, strictly, is that the allocation of the proper to sure shares to explicit candidates for them. Such "allottees" is also sent allotment letters (which is also renounceable in favour of others), and also the actual issue of the shares happens later. In most personal corporations allotment and issue are an equivalent method. an organisation might allot shares once it's 1st created or at any time throughout its period so as to boost share capital and/or introduce new shareholders.⁴

Issuing shares could be a a lot of complicated procedure than several would expect. there's much more thereto than simply filling in a very kind and causation it to corporations House. the subsequent rules apply to the allotment and issue of shares in European country and Wales, European nation and European nation. All the subsequent matters might need attention:

- Authorised capital
- Restrictions on the directors' powers
- Directors would like authority to allot
- Pre-emptive rights for existing members
- Shares square measure assigned by the board
- Registration

Authorised capital

(No longer a legal demand however still applicable to several companies) Companies aren't any longer needed to state their authorised share capital and this can be an inspiration that's changing into obsolete. Any company registered before one.10.2009, however, can have Associate in Nursing authorised share capital provision in its memo of association, unless this has later been removed. Such an organisation might issue shares solely up to the number of its authorised (also known as "nominal") capital (the figure expressed within the capital clause of the memo of association). If there's not enough authorised capital offered, it'll be necessary for the corporate to amend the articles. (See connected topic: Authorised capital).

Statutory restrictions on the directors' powers:

At common law the issued of shares was a matter of management then, subject to any restrictions within the company's articles, a matter for the administrators to determine. there have

⁴ <https://www.investopedia.com/terms/a/allotment.asp>

been samples of abuse by administrators within the exercise of those powers, and statutory restrictions are placed on them:

Directors would like authority to allot:

If the corporate has just one category of shares, the administrators have authority to allot shares of that category unless there's a restriction within the company's articles (sec550, CA 2006). If the corporate has over one category of shares, the administrators have to be compelled to be authorised by either a provision within the company's articles or by a standard resolution (sec551, CA 2006). Such authorisation should state the utmost quantity of shares which will be assigned, and should limit the time throughout that the authorisation is valid, that can not be over five years. It should impose conditions like specifying the share value, the aim of the allotment or the identity of the allottees.

So in several cases the administrators should run authority by the shareholders to allot new shares. Even wherever the administrators and also the shareholders square measure an equivalent folks, these procedures should be complied with. Company Law Solutions can advise and prepare the documentation needed.

Pre-emptive rights for existing members:

Pre-emptive rights are wherever existing shareholders have a right to require up any shares being issued in proportion to their existing shareholdings. Such rights is a very important protection to shareholders, significantly minority shareholders, to stop their holdings (and significantly their option and dividend rights) from being diluted. On the opposite hand, compliant with the pre-emption provisions, or excluding them from a selected allotment, are a necessary legal procedure to follow before supplying shares to, say, Associate in Nursing incoming capitalist or director.

Pre-emptive rights will arise from:

- sec561, CA 2006 (statutory pre-emptive rights), which is able to apply unless excluded by the articles; or
- provisions within the company's articles or old-style memo and articles; or
- under a shareholders' agreement.

The statutory pre-emptive rights don't apply to:

- issues of bonus shares (sec564); or
- shares issued part or whole for non-cash thought (sec565)
- shares command below Associate in Nursing employees' share theme (sec566)

And they is excluded by:

- a provision within the company's articles (including wherever the articles contain an alternate pre-emption right), or
- by passing a special resolution (sec569 - sec 571)

The shares may even be offered to the members WHO then waive their rights to them by means that of a relinquishment letter.

Company Law Solutions can advise and prepare the documentation needed.

Shares square measure assigned by the administrators

Having attended to the on top of matters, the board ought to resolve to allot the shares, stating the quantity and sophistication of shares, the allottees, the worth paid, once and whether or not for money or different assets. like all different choices of the administrators, minutes must be taken and unbroken for 10 years.

Registration

The registration necessities (traditionally attended to by the corporate secretary, tho' several personal corporations now not have such Associate in Nursing officer) are:

- Issue share certificates to the allottees.
- Amend the register of members, (one of the statutory registers) and will even be entered in a very register of allotments (a voluntary register unbroken by several companies).
- If the difficulty has affected the identity or details of any of the those that have important management of the corporate, the company's PSC register (one of the statutory registers) should be amended and also the data sent to corporations House. See PSC register for any details.

Company Law Solutions provides Associate in Nursing professional service for share allotments providing all the specified minutes, documents and forms with sensible recommendation.⁵

STATUTORY RESTRICTIONS ON ALLOTMENT

1. Minimum subscription and application money [s.39] – When Shares are offered to the public, the amount of minimum subscription has to be stated in the prospectus. No shares can be allotted unless at least so much amount has been subscribed and the application money (which must not be less than five percent, SEBI may prescribe different percentage) has been received in by cheque or other instrument. An application for shares, if not accompanied by any such payment, does not constitute a valid offer. If the minimum subscription has not been received within 30 days of the issue of the prospectus, or such other period as may be prescribed by SEBI, the amount received is to be returned within such time and manner as may be prescribed.⁶

2. Shares to be dealt in on stock exchange [S. 40] – Every company intending to offer shares or debentures to the public by the issue of a prospectus has to make an application before the issue to any one or more of the recognized stock exchange for permission for the shares or debentures to be dealt with at the exchange. This is known as listing. The name or names of the stock exchange to which the application has been made must also be stated in the prospectus. Where an appeal has been preferred under Section 22, Securities Contracts (Regulation) Act, 1956 against the refusal of a stock exchange, the allotment does not become void until the dismissal of the appeal.⁷

⁵ <https://www.companylawclub.co.uk/issuing-shares>

⁶ <https://www.legalbites.in/allotment-of-shares/>

⁷ <https://www.legalbites.in/allotment-of-shares/>

General principles as to allotment

- 1. Allotment by proper authority** – In the first place, an allotment must be made by a resolution of the Board of Directors. “Allotment is a duty primarily falling upon the directors”, and this duty cannot be delegated except in accordance with the provisions of the articles.
- 2. Within reasonable time** – Allotment must be made within reasonable period of time, otherwise the application lapses. What is reasonable time depends upon the facts of the case. On the expiry of reasonable time Section 6, Contract Act applies and the application must be deemed to have been revoked.
- 3. Must be communicated** – The allotment must be communicated to the applicant. Posting of a properly addressed and stamped letter of allotment is sufficient communication even if the letter is delayed or lost in the course of post. [SP Gaekwad v. Shantadevi Gaekwad, (2005) 11 SCC 314]
- 4. Absolute and unconditional** – Allotment must be absolute and in accordance with the terms and conditions of the application, if any.⁸

PROVISIONS OF COMPANIES ACT RELATING TO ISSUE AND ALLOTMENT OF SHARES

1. A public company should file a prospectus or statement in office of prospectus, attractive offers from the general public for the acquisition of shares within the company.
2. once finding out the prospectus, the general public applies for shares of the corporate within the written. prescribed forms. the corporate will elicit the problem worth of the share to be paid fully along side the applying or it is collectible in instalments as share application cash, share allotment cash, share 1st decision, share second decision and then on. quantity|the quantity|the number} collectible as application cash should be a minimum of five p.c of the nominal amount of the share.
3. No allotment of shares is created unless the ‘Minimum Subscription’ as given within the prospectus had been signed or applied for. Minimum Subscription is that the minimum quantity that, within the estimate of the administrators, is needed to run the business. it's to be explicit within the prospectus.
4. the number of share application cash should be deposited during a bank. It is operated by the corporate solely once obtaining the certificate of commencement.
5. If the minimum subscription quantity of ninetieth of the problem wasn't achieved by the corporate among sixty days from the date of closure of the problem, the corporate needs

⁸ <https://www.legalbites.in/allotment-of-shares/>

to refund the whole subscription quantity right away. For any delay on the far side seventy eight days, the corporate needs to pay associate interest of 6 June 1944 each year. After allotment, the administrators will decision upon the shareholders to pay the complete quantity due on shares in one or additional instalments as mentioned within the prospectus. The articles of a corporation sometimes contain provisions relating to calls. If there's no such provision within the Articles, the subsequent provisions shall apply:

- No decision shall be for over twenty fifth of the par value of every share.
- Interval between any 2 calls shouldn't be but one month.
- At least fourteen days' notice should run to every member for a decision specifying the number, date and place of payment. Call ought to be created on a regular basis on the whole body of shareholders falling below constant category.⁹

CONCLUSION

With the today's competitive aura and situation in India arising due to globalisation and multi-nationals getting into the Indian market; it was felt that Indian companies need liberty and openness. Though the response to buy-back option was lukewarm in the beginning, the situation is changing and the provisions for buy-back have received laudable response from the corporate world. Since the approval of buy-back of shares by companies, there has been commendable shoot up in the instances of buy-back. However, the present regulations leave wide scope for misuse. More specifically, it is found that the present regulations do not ensure the much desired transparency in the case of open market method of buybacks. In such buybacks, a company in public announcement declares the date of opening of the offer and the end date, the maximum total amount to be bought back and the maximum offer price per share during the process of buy-back. However, indicating the maximum price alone does not bring about the needed transparency in the system and leaves much room for price manipulation by the company promoters. It is found in Table 12 that there is an unduly large gap between the maximum announced price and the actual buyback price paid by the company in a large proportion in case of open market buybacks. The time gap between the announcement date and the opening of the offer date of buy-back of shares varied from day one to 110 days. The time gap between the announcement date and the opening of the offer date was three days in case of 11 companies in the study. However, irrespective of difference between the announcement date and the opening of the offer date it is noted that the difference in price between announcement date and opening of the offer date, ranged between (-25%) to (+25%). Hence, from the shareholders viewpoint, 163 the disclosure of maximum price alone does not bring about the needed transparency in the system.¹⁰

⁹ <https://accountlearning.com/procedures-for-issue-and-allotment-of-shares-provisions-of-companies-act/>

¹⁰ http://shodhganga.inflibnet.ac.in/bitstream/10603/3493/13/13_chapter%206.pdf