

## Ch. 11 Allotment of Securities and Issue of Certificates

### Introduction

Allotment is an act of appropriation of certain number of securities to those persons who have applied for it.

The Certificate conveys the title to the security and is issued subsequent to allotment.

The Companies Act, 2013, SEBI (Issue of Capital and Disclosure Requirements), Regulations, 2009 (“SEBI ICDR Regulations”), and Securities (Contracts) Regulations, provide for procedural aspects as to allotment and issue of Certificates for securities.

### Share

According to 2(84) of the Act, “share” means a share in the share capital of a company and includes stock.

### Securities

The word “securities” includes shares and other instruments.

As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 “securities” include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company; and
- (ii) Government securities; such other instruments as may be declared by the Central Government to be securities.

### General principles regarding allotment

“Allotment” of shares means the act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company of a certain number of shares to persons who have made applications for shares.

The general principles regarding allotment of securities are as follow:

#### 1. Proper Authority

The allotment should be made by proper authority, i.e. the Board Directors of the company, or a committee authorized to allot securities on behalf of the Board.

#### 2. Reasonable Time

Allotment of securities must be made within a reasonable time. What is a reasonable time being a question of fact in each case. An applicant may refuse to take securities if the allotment is made after a long time.

#### 3. Absolute & Unconditional

The allotment should be absolute and unconditional. Allotment of securities subject to certain conditions is also not valid.

#### 4. Communication

The allotment must be communicated. Posting of letter of allotment or allotment advice will be taken as a valid communication even if the letter is lost in transit.

#### 5. In Writing

Allotment should be made against application only. No valid allotment can be made on an oral request. Section 2(55) of the Act requires that a person should agree in writing to become a member.

<b>6. No Contravention</b>	Allotment should not be in contravention of any other law. If securities are allotted on an application of a minor, the allotment will be void.
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<b>Judicial pronouncement</b>	
1.	Allotment made without proper authority will be invalid. Allotment of shares made by an irregularly constituted Board of directors shall be invalid [ <b>Changa Mal v. Provisional Bank</b> ]
2.	An allotment may be valid even if some defect was there in the appointment of directors but which was subsequently discovered. [Section 290 and the <b>Rule in Royal British Bank v. Turquand</b> ]
3.	An allotment by a Board irregularly constituted may be subsequently ratified by a regular Board. [ <b>Re. Portugese Consolidated Copper Mines</b> ]
4.	A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment. [ <b>Yark Tramways Co. v. Willows</b> ]
5.	The interval of about 6 months between application and allotment was held unreasonable. [ <b>Ramsgate Victoria Hotel Company v. Montefione</b> ]
6.	Grant applied for certain shares in a company, the company dispatched letter of allotment to him which never reached him. It was held that he was liable for the balance amount due on the shares. [ <b>Household Fire &amp; Carriage Accident Insurance Co. Ltd. Vs. Grant</b> ]
7.	The mere entry of a shareholder's name in the company's register is insufficient to establish that an allotment was in fact made. [ <b>Official Liquidator, Bellary Electric Supply Co. v. Kanni Ram Ramwoothmal</b> ]
8.	There can be no proper allotment of shares unless the applicant has been informed of the allotment. [ <b>Re. British and American Steam Navigation Co.</b> ]

<b>Provisions relating to allotment of securities – Companies Act 2013</b>	
<b>Minimum Amount</b>	Section 39(1) states that no allotment of any securities of a company shall 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 so stated have been paid to and received by the company.
<b>Minimum Application Money</b>	According to Section 39(2), the amount payable on application on every security shall not be less than five per cent of the nominal amount of the security.
<b>Money to be returned</b>	If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, the amount so received shall be returned within 15 days from

	the closure of the issue. If any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at 15% P.A.
<b>File Return of allotment</b>	Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in <b>Form PAS-3</b> .
<b>Companies (Prospectus and Allotment of Securities) Rules, 2014 - Rules relating to allotment of securities</b>	
Rule 12 states that whenever company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3. There shall be attached to the Form PAS-3 a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees.	
In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the <b>Form PAS-3</b> a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services.	
In the case of issue of bonus shares, a copy of the resolution passed in the general meeting, authorizing the issue of such shares shall be attached to the <b>Form PAS-3</b> .	
<b>Penalty for default</b> In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.	

<b>Judicial Pronouncement about return of Allotment</b>	
1.	In <b>Sri Gopal Jalan &amp; Co. vs. Calcutta Stock Exchange Association Ltd.</b> , the Supreme Court held that the exchange was not liable to file any return of the forfeited shares under Section 39 of the Companies Act, 2013, when the same were re-issued. The Court observed that when a share is issued and forfeited there is no allotment.
2.	Allotment of shares against promissory notes shall not be valid. [ <b>Chokkalingam vs. Official Liquidator</b> ]

<b>SHARE CERTIFICATE</b>	
<b>Meaning</b>	A share certificate is a certificate issued to the members by the company under its common seal specifying the number of shares held by him and the amount paid on each share.
<b>Distinct No.</b>	According to Section 45 of the Companies Act, 2013 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification.

	However, such distinction shall not be required, as per proviso to Section 45, if the shares are held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.
	This certificate is a prime facie evidence of title to the shares in the possession of shareholders. [ <b>Society Generale De Paris vs. Walker</b> ]
<b>Nature</b>	According to Section 46(1) of the Act, a certificate under the common seal of the company is <i>prima facie</i> evidence of the title of the person to the shares specified therein.
<b>Duplicate share Certificate</b>	Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate — (a) is proved to have been lost or destroyed; or (b) has been defaced, mutilated or torn and is surrendered to the company.
<b>Form No.</b>	Every certificate of share or shares shall be in Form No. SH.1 or as near thereto as possible. The particulars of every share certificate issued shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in <b>Form No.SH.2</b>

<b>ISSUE OF SHARE CERTIFICATE RULE 5 OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014</b>	<b>ISSUE OF RENEWED OR DUPLICATE SHARE CERTIFICATE RULE 6 OF THE COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014</b>
Pass board resolution.	Renewal to be made only on surrender of old Certificate.
Letter of offer surrendered to company if the letter is lost or destroyed the board may impose reasonable terms.	Company may charge fee for duplicate share certificate as the board decides but not exceeding Rs. 50 per certificate.
Certificate shall be issued in Form No. SH-1 and shall specify the name of person in whose favor the certificate is issued	Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the prior consent of Board.
Certificate shall be issue under the common seal of the company.	If the company is listed, then the duplicate share certificates shall be issued within 15 days and if the company is unlisted it shall issue the certificates in 3 months.
The certificate shall be signed by -Two directors duly authorized by the board if the composition of board permits at least one of the aforesaid two directors shall be a person other than managing or whole time director -The secretary or any person authorized by the board.	The particulars of renewed and duplicate share certificate to be entered in Form No. SH.2.  The register to be kept at registered office of the company.

Particulars of shares certificates to be entered in the Register of Members.	On fraudulent issue the company shall be punishable with: fine which shall not be less than five times the face value of shares involved which may extend to ten times.
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Register of renewed and duplicate share certificates shall be maintained in **Form SH2**.

### **Maintenance of share certificate forms and related books and documents-(Rule 7)**

(1) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and the blank form shall be consecutively machine numbered and the printing blocks, engravings and other things relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may authorize.

(2) The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates

- (a) the committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or
- (b) where the company has no company secretary, a Director specifically authorized by the Board for such purpose.

(3) All books referred to in sub-rule (2) shall be preserved in good order not less than thirty years and in case of disputed cases, shall be preserved permanently.

<b>Record of depository</b>	Section 46 (4) states that 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.
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<b>Issuing duplicate share certificates to defraud</b>	Section 46 (5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447, for fraud.
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### **Time of issue of Certificate of Securities**

Under Section 56(4) of the Act, every company must deliver the certificates of all securities allotted, transferred or transmitted: -

(a) within a period of two months from the date of incorporation,	in the case of subscribers to the memorandum;
(b) within a period of two months from the date of allotment,	in the case of any allotment of any of its shares;
(c) within a period of one month from the date of receipt by the company of the instrument of transfer or of the intimation of transmission	in the case of a transfer or transmission of securities;
(d) within a period of six months from the date of allotment,	in the case of any allotment of debenture.

However, where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Where any default is made in complying with the above provisions, the company shall be punishable with fine which shall not be less than Rs 25,000 but which may extend to Rs. 5 lakh and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 1,00,000. [Section 56(6)]

### **Split Certificate**

A split certificate means a separate certificate claimed by a shareholder for a portion of his holding. The advantages of a split certificate are that the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

### **Whether Share Certificate is an Official Publication or not**

The question whether a share certificate is an official publication within the meaning of Section 12(3)(c) was considered by the Department of Company Affairs (Now, Ministry of Corporate Affairs) and the Department has clarified as follows:

According to Section 82 the shares in a company are movable property transferable in the manner provided in the articles of the company.

According to Section 84, a certificate under the common seal of the company specifying any share held by any member shall be *prima facie* evidence of the title of the member to such share.

Thus, shares are movable property transferable in the manner provided in the articles of the company and that the share certificates are certificates of title but are not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement.

Therefore, the conclusion reached is that the share certificate is not an official publication within the meaning of Section 12(3)(c).

### **Legal Effect of Share Certificate**

A share certificate is *prima facie* evidence to the title of the person whose name is entered on it. It means that the share certificate is a statement by the company that the moment when it was issued, the person named in it was the legal owner of the shares specified in it, and those shares were paid-up to the extent stated.

A share certificate once issued by the company binds it in two ways, namely:

- (a) by estoppel as to title, and
- (b) by estoppel as to payment.

<b>Estoppel as to Title</b>	It is a declaration by the company to the entire world that the person in whose name the certificate is made out and to whom it is given is a shareholder in the company. In other words, the company is estopped from denying his title to the shares.
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<b>Estoppel as to Payment</b>	If the certificate states that on each of the shares full amount has been paid, the company is estopped as against a <i>bona fide</i> purchaser of the shares, from alleging that they are not fully paid.
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**Calls-** A call is a demand, by the company in pursuance of a Board resolution and in accordance with the articles of the company, upon its shareholders to pay the whole or part of the balance still due on shares allotted or held by them made at any time during the life of the company.

The amount payable in application on each share shall not be less than five per cent of the nominal amount of the share. The balance may be payable as and when called for in one or more calls.

In the event of default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares in case the call is not paid. The liability of members is enforceable only after a proper notice which is called 'call letter' or call notice as 1st, 2nd and final or so on, is given to him in accordance with the articles.

**Requisites of a valid call**

<b>1. Board of Directors to make call(s) on shares</b>	The power to make calls is exercised by the Board in its meeting by means of a resolution.
<b>2. Call(s) to be made bona-fide in the interest of the company</b>	The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of directors, the call will be invalid.
<b>3. Call(s) must be made on uniform basis</b>	According to Section 49 of the Act, calls on same class of shares must be made on a uniform basis. In other words, there cannot be any discrimination between shareholders of the same class as regards amount and time of payment of call.
<b>4. Notice of call(s)</b>	The notice of call must specify the exact amount and time of payment.
<b>5. Time limitations for receiving the call money</b>	If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment of the issue.

**Rules for Call money (Table-F of Schedule-I)**

- (a) For each call at least 14 days' notice must be given to members.
- (b) An interval of one month is required between two successive calls and not more than one-fourth of the nominal value of shares can be called at one time. However, companies may have their own articles and raise the limit.
- (c) The Board of directors has the power to revoke or postpone a call after it is made.
- (d) Joint shareholders are jointly and severally liable for payment of calls.
- (e) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles. The directors are free to waive the payment of interest wholly or in part.
- (f) If any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the articles.

(g) A defaulting member will not have any voting right till call money is paid by him.

### **Forfeiture of Shares**

Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares. For a valid forfeiture, satisfaction of following conditions is necessary:

<b>1. Authorization of forfeiture of shares</b>	If Articles authorize, the forfeiture shall include forfeiture of all dividends declared in respect of the forfeited shares and such dividend is not actually paid before the forfeiture of the shares.
<b>2. Resolution for Forfeiture</b>	If the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a resolution forfeiting the shares.
<b>3. Proper Notice</b>	Before the shares of a member are forfeited, a proper notice to that effect must have been served.
<b>4. Power of forfeiture</b>	The power of forfeiture must be exercised <i>bona fide</i> and in the interest of the company.

### **Effect**

When forfeiture of shares takes place, shareholder ceases to be a member and the forfeited shares become the property of the company.

### **Legal Pronouncement about forfeiture of shares**

1.	<b>Naresh Chandra Sanyal vs. Calcutta Stock Exchange Assn. Ltd.</b> According to Regulation 28 of Table F of Schedule I to the Companies Act, 2013, shares can be forfeited only against non-payment of any call, or instalments of a call. However, the Articles of a company may lawfully incorporate any other grounds of forfeiture.
2.	<b>Hope vs. International Finance Society</b> Where the articles authorize the directors to forfeit the shares of a shareholder, who commences an action against the company or the directors, by making a payment of the full market value of his shares, it was held that such a clause was invalid as it was against the rights of a shareholder.

### **Re-issue of Forfeited Shares**

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. This is done by a Board resolution. After the money due is received from the new member(s), the company executes a transfer deed and issues a share certificate, and if the original holder has already surrendered the share certificate, it is duly transferred, otherwise after a public notice in a newspaper, a new share certificate is issued.

If the shares are re-issued at a price more than the face value, the excess of the proceeds of sale is not payable to the former owner, if the Articles so provides. [**Re. Calcutta Stock Exchange Assn.**]

However, in the case of **Naresh Chandra Sanyal vs. Calcutta Stock Exchange Ass. Ltd.**, Supreme Court held that, where the articles are silent with regard to such surplus, the right of a company upon the forfeiture and sale of forfeited shares is to use the proceeds for discharging the liability for which the forfeiture was effected and if there is any balance, it belongs to the defaulter and cannot be appropriated by the company.

### **Surrender of shares**

A company cannot accept a surrender of its shares “as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful...forfeiture is a statutory exception and is the only exception”. [**Bellerby vs. Rowland and Marwood’s S.S. Co. Ltd.**]

However, a surrender can be accepted in circumstances absolutely parallel to the requirements of a forfeiture, the only difference being that instead of going to the length of the formalities of a forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering.