

Major Amendment regarding Share Application Money

Dear Professionals Colleagues,

It is my humble effort to update you all regarding a very important amendment in Corporate Laws through MCA Notification dated December 14, 2011. Ministry of Corporate Affairs has vide its notification dated 14.12.2011, amended the Unlisted Public Companies (Preferential Allotment) Rules, 2003. There are quite a few changes in the above rules through the above said notification.

You may download the said notification from the link given below:

<http://www.caclubindia.com/forum/major-amendment-regarding-share-application-money-180694.asp>

During my study of the same I found that the most relevant change introduced through the above notification in the Rules 2003, is regulation of acceptance of Share Application Money in an unlisted Public company. As per my understanding this amendment is a major amendment introduced in the recent past and impact of this amendment is quite big so it should be taken note off.

Through this change the following areas are regulated regarding Share Application Money:

1. Time Limit within which Allotment of security should be done against the receipt of application money.
2. Time Limit within which Application money should be refunded in case of failure to allot security within 60 days of receipt of application money.
3. Penal provisions i.e. charging of interest on application money @ 12% p.a., in case fail to repay the same within prescribed time limit.
4. Restriction on use of application money.

Please find below the relevant and highlighted clause regarding amendment in Share Application Money provisions:

Rule 8 of Unlisted Public Companies (Preferential Allotment) Rules, 2003, regarding Invitation and allotment of securities.-

(1) No fresh offer or invitation shall be made unless the allotment with respect to any offer or invitation made earlier have been completed in terms of sub-section (9) of section 60B of the Companies Act, 1956.

(2) Any offer or invitation not in compliance with sub-section (1A) of Section 81 read with sub-section (3) of section 67 of the said Act, shall be treated as a public offer and the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be complied with.

(3) All monies payable on subscription of securities shall be paid through cheque or demand draft or other banking channels but not by cash.

(4) Any allotment of securities shall be completed within sixty days from the receipt of application money and in case the company is not able to allot the securities within the period of sixty days, it shall repay the application money within fifteen days thereafter, failing which it will be required to be re-paid with interest at the rate of twelve percent per annum:

Provided that the monies received on such application shall be kept in a separate bank account and shall not be utilised for any purpose other than—

(i) for adjustment against allotment of securities; or

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

(5) No company offering securities shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

MY INTERPRETATION AND ANALYSIS:

My interpretation and analysis regarding the above amendment in Unlisted Public Companies (Preferential Allotment) Rules, 2003, with respect to the receipt and use of Share Application Money are as follows:

POSITION BEFORE THE ABOVE AMENDMENT

Before the amendment mentioned above there was no provision regarding the receipt and time period and purpose for utilization of Share Application Money. In other words regarding how long can the company show share application money in its Balance Sheet, company Law was silent.

Regarding time limit to convert such share application money into capital the law was completely silent. Practically speaking allotment of shares cannot be kept pending indefinitely. It would also not be proper for a company to indefinitely hold up allotment of shares. However as per practice and keeping in view the Reporting of FDI provisions in FEMA, professionals used to allot share with 6 months [180 days] of the receipt of application money.

POSITION AFTER THE ABOVE AMENDMENT

But after the above said amendment allotment of securities shall be completed within sixty days [60 days] from the receipt of share application money.

In case company fails to allot securities against the share application money within the period of 60 days, it shall repay the application money within 15 days thereafter without interest.

However if company fail to repay the un-utilised share application money within the prescribed time limit of 15 days [fixed for repayment of un-utilised Application money], it will be required to be re-paid with interest at the rate of 12% per annum.

POSITION IN PRIVATE COMPANY

One more notable thing in case of a Private Company is that above Rules are not applicable to a Private Company. Hence position in case of a Private Company shall remain same as it was applicable to a Public company before the above mentioned amendment.

GOOD SECRETARIAL and ACCOUNTING PRACTICE

Share application money is not a part of share capital because it is only application money and is not share capital. It becomes share capital only on allotment of security. In view of this, share application money pending allotment should be treated as current liability in books of accounts and should be disclosed as a current liability and not as a part of share capital.

As per my understanding of good secretarial practice, receipt of Share Application Money should be acknowledged in the board meeting through a board resolution.

It is very much advisable to collect the **share application form** from the proposed allottee for your record and future reference. You may download the sample share application from the below mentioned link from where I had downloaded the same long way back:

SHARE APPLICATION FORM

<http://www.caclubindia.com/forum/download-corporate-law-professional-files-70021.asp>

Hope you find the above information useful. Please share your opinion.

Thanks
RG