

GOT THE FUNDS BUT WHAT TO DO NEXT?



WEDNESDAY WISDOM
25-09-2024

INTRODUCTION[1]:

In an unexpected turn SEBI recently cancelled the IPO of a company on the date of listing, despite the company already receiving funds from public. This cancellation has left the company with a significant sum of money but no clear direction on how to proceed. This situation not only highlights the complexities of regulatory intervention but also raises important questions about the company's next steps in utilisation of funds.

While this instance involved an IPO, and stringent SEBI regulations similar challenges could emerge for private or public companies during rights issues, preferential allotments, or even at the stage of subscription to a Memorandum of Association (MOA) if the legal compliances were not considered.

Let's dive deep into these compliances regarding utilization of funds by the company and the consequences of contravention of those regulations.

TYPE OF ISSUE

Initial subscription

Initial Subscription is the contribution made by promoters of the company at the time of incorporation. These promoters are known as subscribers to the memorandum and the subscription is the initial capital of the company.

It is governed by section 10A of companies Act 2013[2]

REQUIREMENTS

Form INC 20A

This form officially declares the commencement of business and confirms that the company is operational and has met its initial financial requirements.

The company must file this form within 180 days from the date of incorporation.

Promoters cannot transfer shares and cannot initiate business unless this form is filed with ROC.

CONSEQUENCES OF NON-COMPLIANCE

Penalties:

Non-compliance can result in a penalty of INR 50,000 for the company

and

INR 1,000 per day for each defaulting officer, with a maximum of INR 1 lakh.

Company Status:

Failure to file can lead to the company being declared as 'inactive' and can eventually result in the company's name being struck off the register of companies.

[1] The article reflects the general work of the authors, and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Acts (mca.gov.in)

TYPE OF ISSUE

Private placement

Private placements have become a popular way for startups to raise money.

In a private placement company offers its securities to a selected group of persons instead of public issue.

It is governed by section 42 of companies Act 2013 and Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Preferential Allotment

Preferential Allotment is similar to the private placement, but it can be made only for equity share or for securities convertible into equity shares.

For a preferential allotment company shall follow the provisions of section 62(1)(c) read with Rule 13 of Companies (Share Capital and Debentures) Rules 2014 in addition to the provisions and rules of Private Placement.

REQUIREMENTS

Form PAS-3: Return of allotment

The money raised through private placement and preferential allotment can be utilized only after securities are allotted in accordance with provisions of the Act.

- Company is required to file return of allotment in e-form PAS-3 with ROC within 15 days from the date of allotment of securities.

The company has to open a separate bank account in a scheduled bank to receive amount against the issuance of securities under the private placement.

CONSEQUENCES OF NON-COMPLIANCE

Contravention

A company, its directors and promoters will be held liable for penalty up to amount raised through private placement/Preferential allotment or Rs. 2 cr whichever is lower, and company has to refund all the money to the subscribers within 30 days from the imposition of such penalty

Additional Fees

Delay in filing return of allotment will lead to additional fees.

If company fails to file Form PAS-3 within 15 days then the company, its promoters, and directors are held liable to a penalty of Rs. 1,000/ per day (continuing default) however, it would not exceed Rs. 25 Lacs.

TYPE OF ISSUE

Right Issue

Right issue means offering securities to the existing members of the company on proportional basis, with these rights the shareholders can purchase new shares at a discount to the market price.

It is governed by Section 62 of companies Act 2023 and companies (Share Capital and debentures) rules 2014

REQUIREMENTS

Form PAS-3: Return of allotment

The money raised through right issue can be utilized only after securities are allotted in accordance with the provisions of Act

The company is required to file return of allotment in e-form PAS-3 with ROC within 15 days from the date of allotment of securities

CONSEQUENCES OF NON-COMPLIANCE

Penalty

If any company and directors fail to adhere with provision of right issue, there is no direct penal provision given under Companies Act 2013, However as per section 450 of the Companies Act, 2013 where no specific penalty or punishment is provided in the Act, the company and every officer of the company who is in default as defined under section 2(60) or such other person is punishable With fine upto Rs.10,000/- and further fine upto Rs.1,000/- each day during which contravention continues

Additional Fees

Delay in filing return of allotment will lead to additional fees.

IPO:

Initial Public Offer is when a company offers its security to the public for the first time through stock exchange.

It is governed by the Companies Act 2013 along with SEBI (ICDR) Regulations 2018.[3]

Since IPO is governed by SEBI company can utilize the proceeds of an IPO when all the listing procedures are completed after the allotment, and it receives clearance from SEBI. SEBI has also specified how to utilize these proceeds.

According to SEBI regulation, purpose and utilization of proceeds of IPO shall be disclosed in the offer document and not more than 35% of the issue proceeds can be used as general corporate purpose and unidentified investments out of which general corporate purpose can be maximum 25%

[3]SEBI | Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

If the issue size exceeds Rs. 100 crore (Excluding offer for sale) it is mandatory for issuer companies to appoint a monitoring agency to monitor and prepare reports on utilisation of issue proceeds. Only SEBI registered credit rating agencies are permitted to act as monitoring agencies. Monitoring Agency shall prepare a quarterly report on utilization of proceeds until 100% amount is utilized as per the offer document. This report will be placed for consideration before the issuer company's audit committee every quarter and uploaded on the website of company and stock exchange within 45 days from end of every quarter.[4]

Ratings

CRISIL
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4) Details of object(s) to be monitored:

i. Cost of the object(s):

Sr. No.	Item Head	Source of information/certification considered by MA for preparation of report	Original cost (as per the Offer Document) (Rs in million)	Revised Cost (Rs in million)	Comment of the MA	Comments of the Board of Directors		
						Reason of Cost revision	Proposed financing option	Particulars of firm arrangements made
1	Repayment/pre-payment, in full or part, of borrowings availed from banks by the Company and Material Subsidiary	Management undertaking, Final offer document	5,101.55	NA	No comments	NA	NA	NA
2	General Corporate Purposes*		11.63	NA	No comments	NA	NA	NA
Total		-	5,113.18	-	-	-	-	-

*The amount utilised for general corporate purposes does not exceed 25% of the Gross Proceeds (amounting to Rs 1,355.00 million) from the Fresh Issue.

[4]This screen shot has been taken just for the reference and as an example for academic purpose.

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