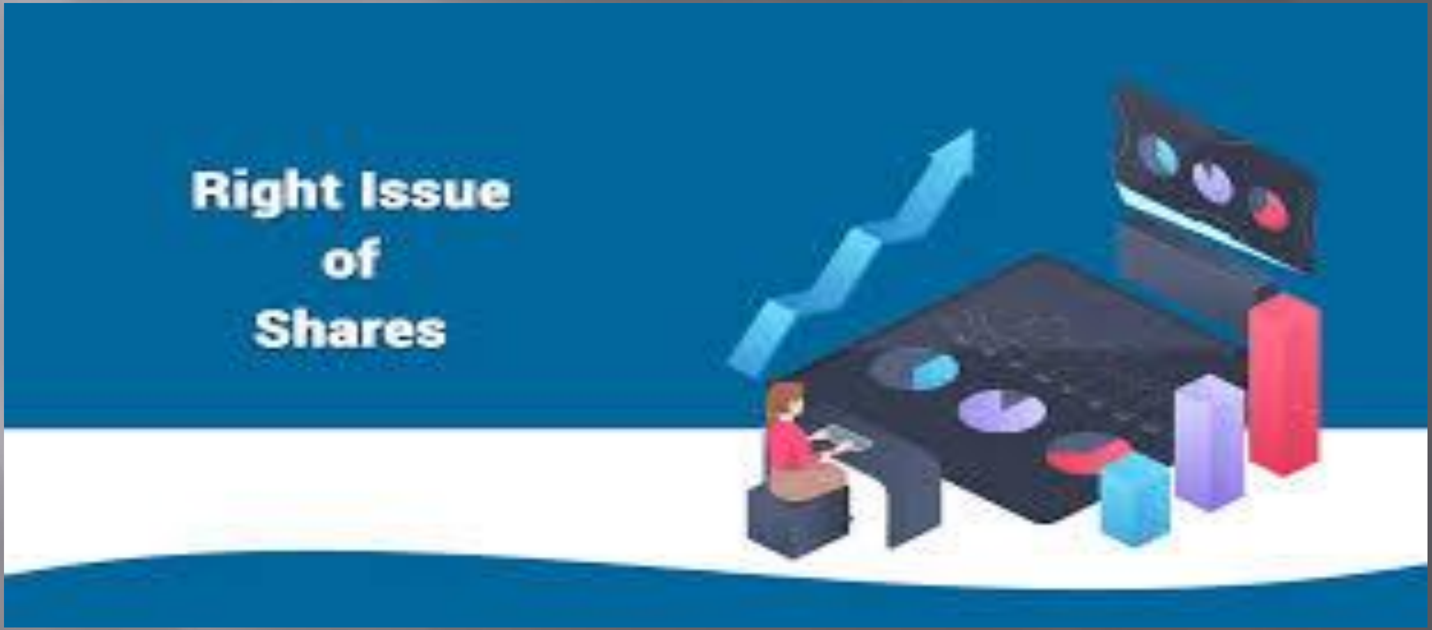
LEGAL ASPECTS OF RIGHT ISSUE OF SHARES BY UNLISTED COMPANY



WHAT IS RIGHT ISSUE?

When a Company offers its new Shares to its existing Shareholders only it is known as the Right Issue of shares. Right Issue is very convenient and cheapest way to issue Shares.

The Right Issue is also known as **"Pre Emptive Rights"** that means the existing Shareholders have first Right to subscribe or deny in the issue of new shares.

The Shareholder can also renounce their offered shares under Right Issue to any other person in full or in part. Accordingly the Shareholder has following three options under Right Issue of Shares:

A. ***Accept the offer in full or in part; or***
B. ***Accept offer in part and renounce remaining part to other person; or***
C. **Renounce the offer in full or in part to other person.**

PROVISIONS RELATING TO RIGHT ISSUE OF SHARES UNDER THE COMPANIES ACT, 2013

Section 62(1)(a) of the Companies Act, 2013 deals with the Right Issue of Shares, though Companies Act does not talk much about the Right Issue of Shares, however, following four legal requirements have been stated:

1. Offer is to be given on **proportionate basis**;
2. In the Letter of Offer following three thing must be specified:

   a. Number of Shares offered;

   b. Offer period within which offer must be accepted or denied; and

   c. Statement that the Shareholder have right to renounce the Shares so offer

3. After the expiry of the offer period the unsubscribed shares so offered can be offered to any other person by the Board of the Company in the manner which is not dis-advantageous to the Shareholders and the Company.
4. The Letter of Offer must be dispatched to all Shareholders three days prior to opening of the Offer Period through registered post, speed post, through electronic mode, courier or any other mode having proof of delivery.

WHAT IS "OFFER IN PROPORTIONATE BASIS"?

The Section 62(1)(a) of the Companies Act provides that Right Offer of Shares must made in proportionate basis. The question here arises that what is proportionate basis.

The crux of this condition is that where a Company issues its Shares under Right Offer, it will offer that same to its Shareholders in the ratio of their existing shareholding.

Lets understand the same with the example: A Company has 10,000 shares in its Paid up Capital and has 10 Shareholders each of them holds 1,000 Shares. Further, the Company is going to issue 20,000 new shares under Right Issue, then the Company will offer the share to them in the ratio of 2:1 i.e. 2 new shares for every 1 share held in the Company, accordingly, as given in this example every Shareholder is holding 1,000 Shares in the Company, therefore, every Shareholder is eligible for 2,000 new Shares.

CAN A SHAREHOLDER SUBSCRIBE SHARES OVER AND ABOVE HIS ENTITLEMENT UNDER RIGHT ISSUE?

There is no such provision in the Companies Act regarding this, however, there is general practice where the Shareholders make application for subscription of Share over and above their entitlement under Right Issue. further the Board of Directors of the Company is not bound to allot Shares to any particular Shareholder over and above his entitlement under Right Issue.

A Shareholder can make application for additional Shares but it depends upon the Board of Directors of the Company whether they allot additional Shares to such Shareholder or not. Further, allotment of additional Shares to any particular Shareholder, or to one or more Shareholder also depends upon the availability of unsubscribed Shares.

Can a Shareholder renounce Share over and above his entitlement under Right Issue?

A Shareholder renounces Shares offered to him under Right Issue in cases where he does not want to subscribe any Shares so offered or where he wants to subscribe the offer in part. The entitlement of a Shareholder is decided on the basis of his existing Shareholding in the Company. A Shareholder holds right on the Shares offered under Right Issue upto his entitlement, however, he can apply for the additional Shares but he has right upto his entitlement only. The Section 62(1)(a) of the Companies Act expressly provides that the Shareholder can renounce Share offered to him, accordingly, it implies that he cannot renounce Shares over and above his entitlement..

WHETHER A RENOUNCEE CAN APPLY FOR SHARES OVER AND ABOVE SHARES RENOUNCED TO HIM?

The answer of this question is also not provided under the Companies Act, however, the renouncee may apply for additional Shares but again it is matter of discretion of Board of Directors of the Company and availability of unsubscribed Shares.

Can a Shareholder get Shares issued under Right Issue without applying for the same?

The answer of this question is no. Although under Right Issue only existing Shareholder is entitled to subscribe the Shares or he can renounce the same, still he has to make application to the Company alongwith the application money. Under Right Issue the Shareholder does not get Shares automatically allotted to him, he has to make application for the same alongwith application money in the manner and form as prescribed and provided by the Company.

WHAT IS THE TIME LIMIT (OFFER PERIOD) TO SUBSCRIBE SHARES UNDER RIGHT ISSUE?

The Section 62(1)(a) of the Companies Act provides that the Board in Letter of Offer shall mention the time limit to subscribe the Shares which shall not be less than 15 days and shall not be more than 30 days.

Accordingly, Shareholder or renouncee has to deposit his application along with Share application money with the Company within time limit given in the Letter of Offer in accordance with the aforesaid provisions of the Companies Act.

However, in case of a Private Limited Company , Offer Period can be of lesser than 15 days where 95% of Shareholders of the Company give their consent in writing on in electronic mode.Further, the Central Government can also prescribe the Offer Period lesser than 15 days.

The Company cannot accept the applications received after the closer of the Offer Period. Further the application must be made in the form provided by the Company with the Letter of Offer.

WHAT IS THE TIME LIMIT TO MAKE ALLOTMENT OF SHARES UNDER RIGHT ISSUE?

The Section 62(1)(a) of the Companies Act ***does not provides any time limit to make allotment of Shares*** under the Right Issue, however, pursuant to the Provisions of Rule 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014, the Company has to make the allotment of Shares within 60 days from the date of receipt of application money to keep the said application money out of purview of Deposit. Accordingly, allotment of Shares has to be made within 60 days from the date of receipt of application money.

In Right Issue the Company receives application money in different days within the Offer Period, therefore, 60 days is to be counted from the date of receipt of first application money.

Further, the allotment of Shares required to be made by the Board of Directors of the Company vide Board Resolution, therefore, the Board Meeting for making allotment of Shares must be held within aforementioned 60 days.

IS VALUATION OF SHARES REQUIRED UNDER RIGHT ISSUE?

The Companies Act, 2013 does not mandate the valuation of Shares under Right Issue of Shares, however, under Section 56 of the Income Tax Act valuation is required, therefore, valuation of Shares is required under Right Issue of Shares.

The method of valuation of Shares is given under the aforementioned Section of the Income Tax Act.

PROCEDURE OF RIGHT ISSUE OF SHARES

Determine amount to be raised through Right Issue

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Get the Shares valued, accordingly, determine number Shares required to issue

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Fix the cutoff date, accordingly:

1. **Finalise the list of Shareholders;**
2. **Fix ratio;**
3. **Prepare draft Letter of Offer; and**
4. **Prepare and dispatch notice to call the Board Meeting atleast seven days before the date of Board Meeting.**

Conti……..

Hold the Board Meeting and:

1. Approve the Right Issue;
2. Approve the Letter of Offer; and
3. Authorise Director to sign and dispatch the Letter of Offer.

In case of unlisted Public Limited Company immediately after the Board Meeting inform the Depositary, Depositary Participant and RTA.

Dispatch Letter of Offer atleast three days before from the date of opening of Offer Period

Conti……..

Open Offer period for not less than 15 days (unless consent of atleast 95% of Shareholders obtained) and for not more than 30 days.

Scrutinize the Application received during the Offer Period, accordingly:

1. Finalise the List of Allottees; and
2. Prepare and dispatch notice to call Board Meeting for allotment of Shares atleast seven days before the date of Board Meeting.

Hold Board Meeting within 60 days from the date of receipt of first application money and:

1. Approve the Allotment of Shares along with List of Allottees;
2. Authorise Directors to make entries in the Statutory Registers;
3. In case Private Limited Company authorise Directors to sing & issue Share Certificate and pay Stamp Duty on the same; and
4. Authorise Director to file Form PAS-3 with ROC.

Conti……..

In case of unlisted Public Limited Company immediately after the Board Meeting inform the Depositary, Depositary Participant and RTA.

Within 30 days from the date of Allotment of Share file Form PAS-3 with ROC along with:

1. Board Resolution of allotment; and
2. List of Allottees.

Within 2 months from the date of allotment issue the Share Certificates.

Within 30 days from the date of issue of Share Certificates pay stamp duty on it.