

Refund of Application Monies: A Critical Aspect of Corporate Governance

The Companies Act, 2013 (the “**Act**”), has introduced significant changes to the rules governing application monies received by companies through private placement and preferential allotment of shares, aiming at enhanced transparency, protection of investor interests, and ensuring timely utilization of funds.

This article outlines the key provisions and implications of non-compliance regarding the refund of application monies under the Act.

Refund of application monies received under the Act:

The Act stipulates restrictions on the utilization of the application monies received under Private Placement of Securities and Preferential Allotment of Shares.

Here are the key considerations under Section 42 of the Act:

1. Application monies may be accepted only in the form of a cheque, demand draft or any other banking channel and not by cash;
2. Companies needs to open a separate bank account in a scheduled bank to receive such application monies, and shall be able to utilize the money only after the securities are allotted and Form PAS-3 (Return of Allotment) is duly filed with the Registrar of Companies;
3. Companies must allot securities within 60 days of receiving application money; and
4. Failure to allot securities within 60 days requires repayment of the entire amount:
 - a. Within 15 days from the expiry of the 60th day – without interest
 - b. After 15 days – with an interest of 12% p.a. from the expiry of the 60th day

The same provisions apply for refund of excess application monies received against an offer for securities.

Further, as per Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014, shares issued by way of a preferential offer should also comply with conditions laid down in Section 42 of the Act.

Implication of non refund of application monies within the prescribed timeline:

Under the Companies Act, 2013, the company, its promoters and Directors shall be liable for a penalty which may extend to the amount raised through the private placement or INR 2,00,00,000 (Rupees Two Crore), whichever is lower, and the company shall also refund all monies with interest to the subscribers within a period of 30 (thirty days) of the order imposing the penalty.

Further, under the Companies (Acceptance of Deposit) Rules 2014, if the securities for which the application money received is not allotted within 60 (sixty) days from the date of receipt of the application money, such amount would be treated as a **deposit** under these rules. Any adjustment of the amount for any other purpose will not be treated as a refund.

In conclusion, the Act has established clear guidelines for the refund of application monies, emphasizing the importance of timely allotment and transparent utilization of funds. Companies, promoters, and directors must adhere to these provisions to avoid penalties and ensure compliance. By understanding these regulations, stakeholders can navigate the complexities of private placement and preferential allotment with confidence, promoting a more robust and investor-friendly corporate environment.

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