

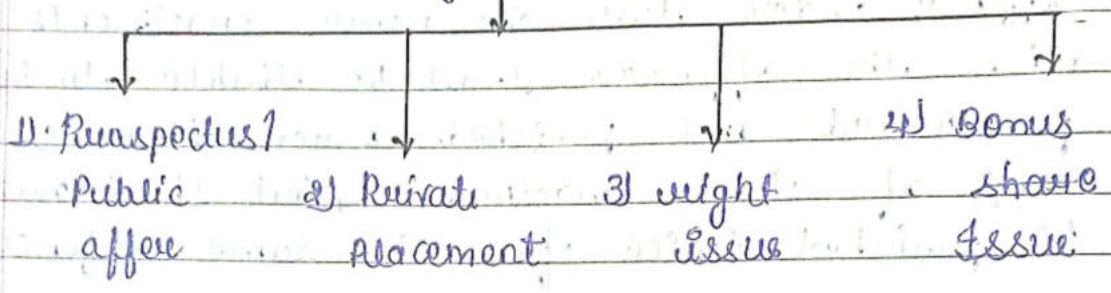
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Lecture-57
Chapter-5 Prospectus

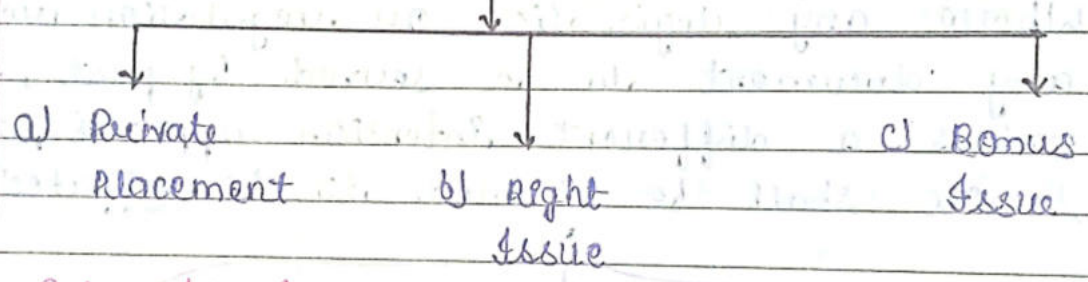
(1-10m)

Que-1 Explain public offer and private placement
- Section 23

Ans- 1) A public company can raise money through



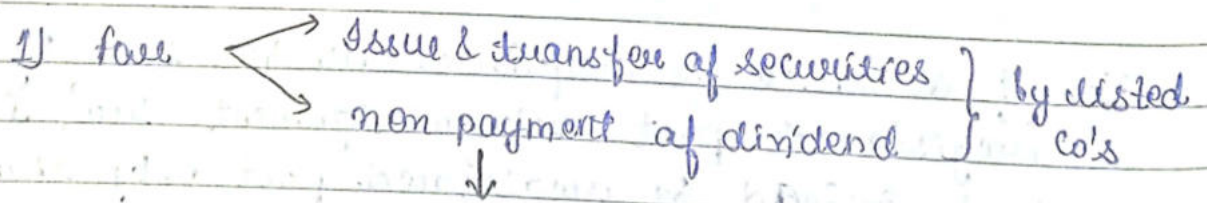
2) A private company can raise money through



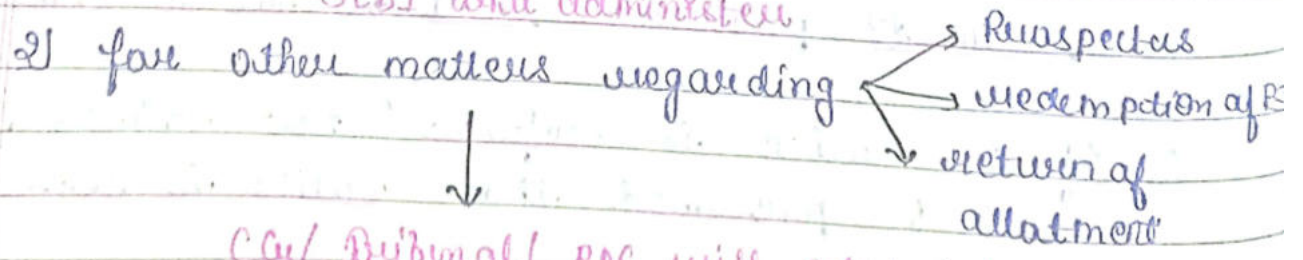
Refer Illustration - mca page 3.6 module

Que-2 Regulation of Issue and transfer of securities etc - Section 24

Ans-



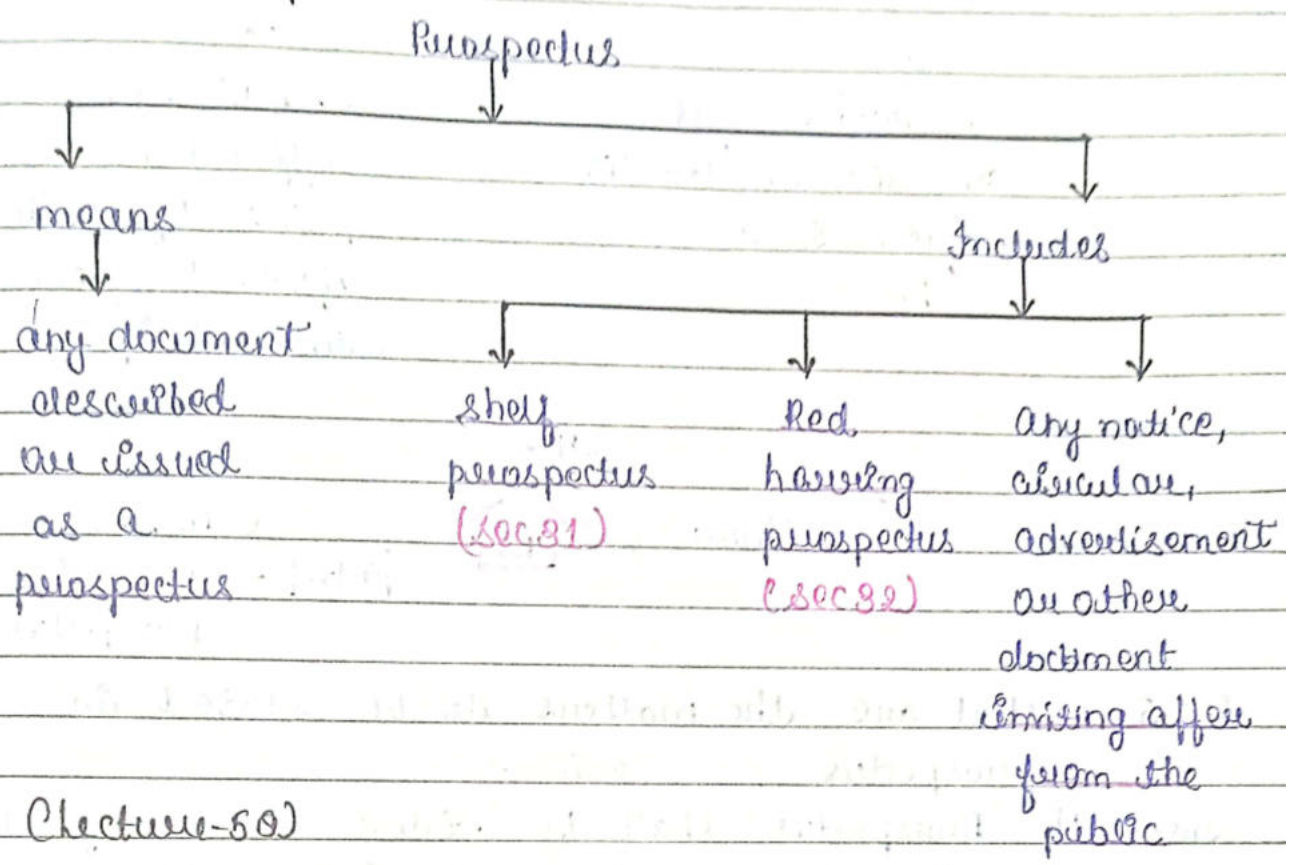
SEBI will administer



CA/ Tribunal/ ROC will administer

Ques Define Prospectus -

Ans-



(Lecture-50)

Ques Explain deemed prospectus - Section 25.

Ans-

(i) Barlier Co. → issued shares to issue house and issue house offered same share to public by → advertisement.

(ii) It helped the companies to avoid the strict requirement of prospectus.

(iii) Any document containing such offer of sale of shares issued by issue house shall be termed as DEEMED PROSPECTUS

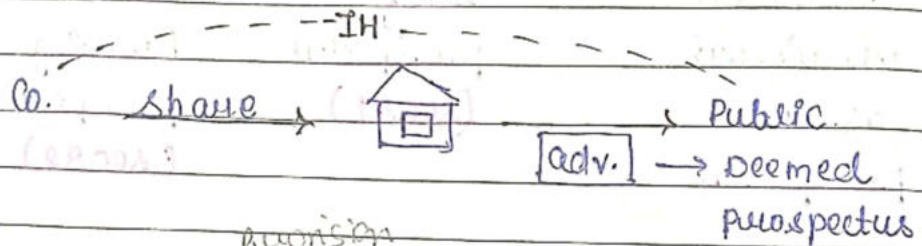
(iv) such advertisement will not be deemed prospectus if ↓

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Co. receives full
consolidated consideration
from Issue
house

Shares are
offered to
public by ICH
after 6m from
allotment by Co.



Ques-5 what are the ^{provisions} matters to be stated in prospectus - Section 26

Ans- 1) Prospectus shall be ~~write~~ dated, signed and shall state such information & such reports on the financial information as may be specified by SEBT in consultation with ICH.

2) A declaration shall be made affirming the compliance of the provisions of this act (the companies act 2013).

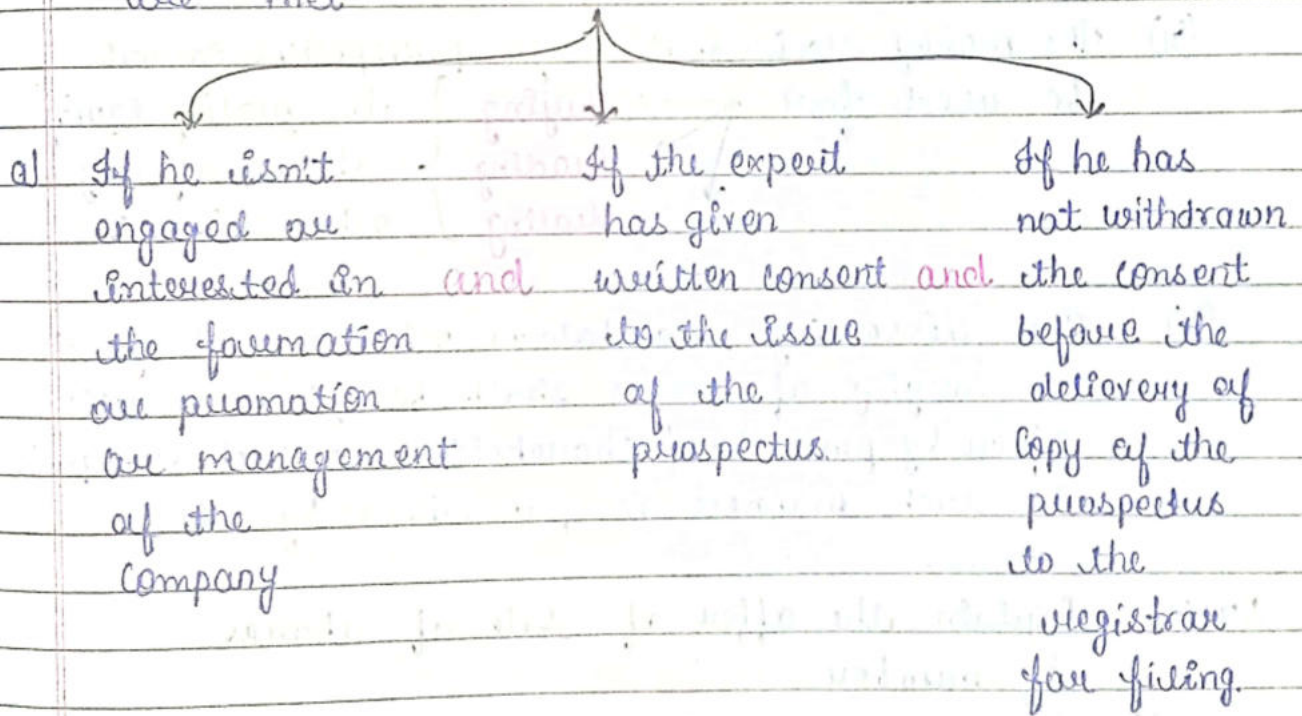
3) A statement shall also include to the effect that nothing in the prospectus is contrary to the provisions of → (CoA 2013, SCRA 1956, SEBT 1992 & its rules)

4) The date indicated in the prospectus shall be deemed to be the date of its publication.

5) A prospectus shall not be issued unless a signed copy of such prospectus has been delivered to the registrar for filing.

6) Such copy shall be signed by every person who is named as either director or proposed director in such prospectus. Only authorised can sign in representative capacity.

7) A prospectus shall not include an expert's statement unless all of the following conditions are met -



8) Prospectus shall be valid for issue for 90 days from the date it is delivered to ROC.

9) If section 26 is contravened, then company

and every person who is knowingly a party to the issue of prospectus shall be punishable with fine of ₹ 50,000 to ₹ 300,000

Que-6 Provision for variation in terms of prospectus
- Section 27

Ans- (i) A Co. can vary terms/objects in prospectus only by passing SR in GM

(ii) Notice for such resolution → publish in
& newspaper

- 1 → in English
- 1 → in regional language
(of city where registered office is situated)

(iii) The money raised through prospectus cannot be used for

- Buying
- Trading
- dealing

} in quality equity shares of any other listed Co.

(iv) The dissenting shareholder who are not agreeing to varying of terms shall be given an exit offer by promoter/shareholder at such exit price in such manner as prescribed by SEBI.

Que-7 Explain the offer of sale of shares by member - Sec 28

Ans- (i) If the member of the company propose in consultation with BOB to offer whole or part of their holding of shares to public they can do so by following the prescribed procedure -

(i) Any document for such offer of sale to the public shall be deemed to be a prospectus issued by the company and all the rules regarding prospectus shall be applicable to such offer of prospectus.

(ii) The members, whether individuals or body corporate or both, whose shares are proposed to be offered to the public, shall authorize the co. and shall take all option for such offer of sale and they will reimburse the company for all the expenses incurred by it on this matter.

Ques - Advertisement of Prospectus - Section 30:

Ans - following are the content for advertisement -

a) objects

b) liability of members & the amount of share capital of the company

c) Name of the signatories to the memorandum

d) Number of shares subscribed for by the signatories, &

e) Capital structure of the company.

Ques - Explain shelf prospectus - Section 31

Ans - (i) It is issued by a company proposing multiple issue of securities:

(ii) Once SP is filed with ROC - fresh prospectus for every issued is not required.

(iii) SP has a validity of 1 year from date of opening of first offer of securities.

(iv) If there is any changes prior to the issue of second issue the company will

Date

file information memorandum (IM) to the ROC.

- (v) The SP and IM makes the final prospectus.
- (vi) The IM shall be filed with ROC within 1 month prior to the issue of second or subsequent offer.
- (vii) If an applicant desired to withdraw the application after company has intimated the changes, the company or other persons shall refund all the money's within 15 days thereof.

Ques-10 Red herring Prospectus - Section 32 (RHP)

Ans- (i) RHP is a draft prospectus which doesn't contain any detail regarding Price of Issue & Size.

(ii) Co. will issue info memorandum (IM) prior to issue of prospectus in order to explore demand for securities.

(iii) atleast 3 days prior to opening of offer, Co. files RHP with ROC.

(iv) RHP has some obligation as application to a prospectus.

(v) On basis of response, Co. finalises the price & size, close the offer, after closure of offer Co. will file final prospectus with ROC.

Date ___ / ___ / ___

Saathi

Ques-11 Explain abridged prospectus - section 33

- Ans- (i) It is a summarized form of prospectus
(ii) An application form should be attached to the prospectus.
(iii) Application form is not required if shares are given

not given to public 'OR' given to underwriter

(iv) If sec 33 = contravened
Penalty = ₹50,000 for each default.

Ques-12 Liability for misstatement in prospectus

- SEC 34/35/447

Ans-

liability.

Civil

(SEC 85)

Criminal

(SEC 34)

(A) Civil liability -

(1) If a person who has subscribed for securities of a company and which contain any statement which is misleading and has sustained loss or damage

Co. and every person

who is a director of Co.

authorised himself to be named as director in prospectus

Promoter of Co.

has authorised the prospectus

is an expert

shall be personally and unlimited liable to every person who has sustained such loss or damage.

9. No person shall be liable if he proves that

he withdraw his consent before issue of prospectus

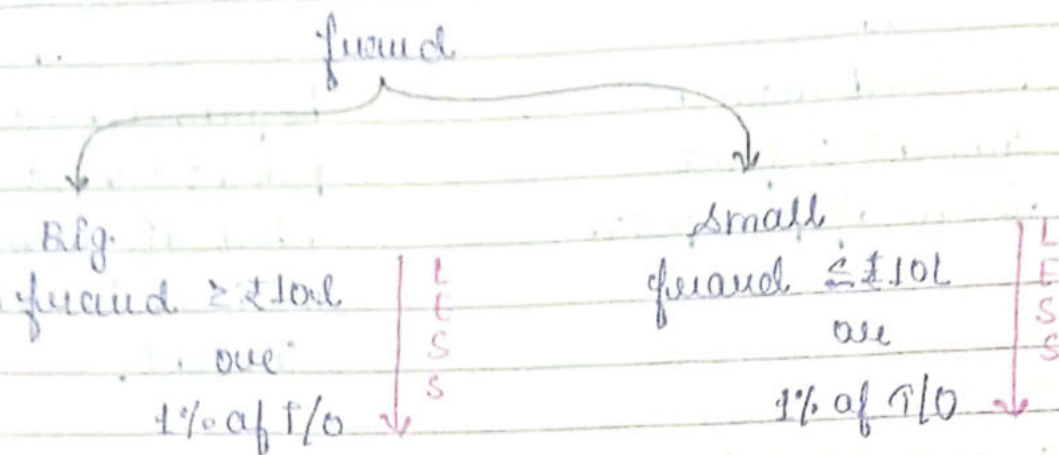
he gave a reasonable public notice stating that it was issued without his knowledge/consent.

8. There will also be No LIABILITY if prospectus contain any misleading statement if it is an extract from a report/valuation of an expert and it was a correct & fair representation of statement and the expert believe & did upto the time of issue of prospectus & has not withdrawn the statement.

(B) Criminal liability - sec 34

If it is proved that prospectus is issued with intent to defraud the applicants of securities of co. or any other person, then every person, referred to in sec 35(1) shall be personally & unlimited liable to compensate the loss suffered & shall also be liable w/s 447 penalty for fraud.

Penalty for fraud v/s 447



	min.	max.	(and)
Impuison-ment	6m 3 years	10 years (Normally) 10 years (Public Interest)	doesn't involve public interest
(AND) fines	Amnt of fraud	5x amnt of fraud	Imp. upto 5 year or upto 50 lakh or both

There will be no criminal liability on the person if he proves that

such statement or omission was immaterial

'OR'

he had reasonable grounds to believe and did believe upto the time of issue of prospectus, that such statements was true or the inclusion or omission was necessary

If there is a misstatement in the prospectus than allottee (person who buys shares on faith of prospectus) will have following rights:

↓

Cancellation of the Contract claim damages

right to reject is lost if he attends general meeting of company & accept dividend.

Lecture-60

Ques-13 Minimum Subscription - Section 39

Ans- 1) No allotment of shares shall be made to public unless minimum amount as stated in prospectus has been subscribed.

2) The application money on every security shall be minimum 5% of the nominal value of the security of such percentage as may be specified by SEBI

3) If minimum subscription not achieved within 30 days from the date of issue of prospectus, then refund the money within 15 days then the directors & officers shall be liable to repay the money with 15% interest p.a.

If minimum subscription	X ≤ 30 days	≤ 15 days	If not refunded
		refund	refund + 15% p.a. interest

4) Whenever company makes allotment company shall file a return of allotment with ROC.

5) In case of default the officer shall be liable minimum ₹1000 maximum ₹1 lakh

Que-14 Return of allotment - Section 39(4)

Ans- If shares are issued for cash or for other than cash, the company should file a return of allotment in form PAS-3 within 30 days along with prescribe fees (Prospectus & allotment of securities)

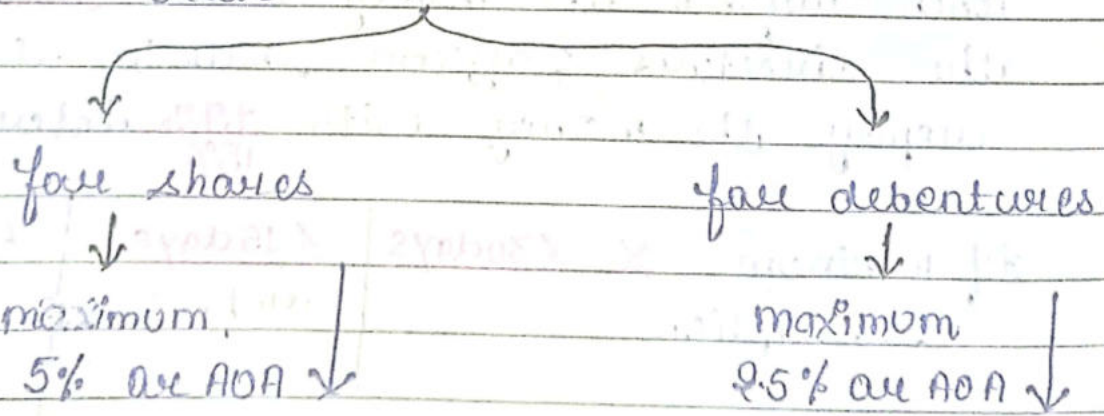
Que-15 Explain underwriting Commission - Section 40

Ans- M- Meaning

In an underwriting contract the underwriters guarantee the minimum subscription for which they are paid a commission called as underwriting commission. It can be paid only for the shares or debentures which are offered to public.

A → It should be authorized by AOA

R → rate



K → (K) copy of underwriting agreement shall be filed with ROC along with prospectus.

E → Eligibility Commission
 Underwritten will be paid even if single share/debenture is not subscribed by underwriters. It can be paid out of profit & loss A/C as well as share capital a/c.

D → Details of underwriters, no. of shares/debentures underwritten, rate should be disclosed in prospectus. It may be paid in kind, cash or lumpsum or kind.

Ques-16 What is irregular allotment?

Ans- refer page no. 66 Ques 8 → main book

Ques-17 Explain global depository receipts - Sec 47

Ans- 1) A company may issue GDR in a foreign country after passing special resolution in general meeting subject to company's rules 2014.

2) The company has to comply with the condition prescribe by CB or RBI.

3) A holder of depository receipt may become a member of the company and shall be entitled to vote only on conversion of depository receipt \times shares.

Q. No. 10
Ans -

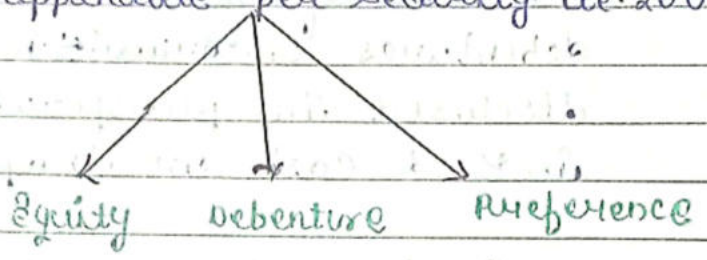
Explain private placement (PP) - Section 42

(i) Any co.
 Public → can offer share to
 Private identified person by PP

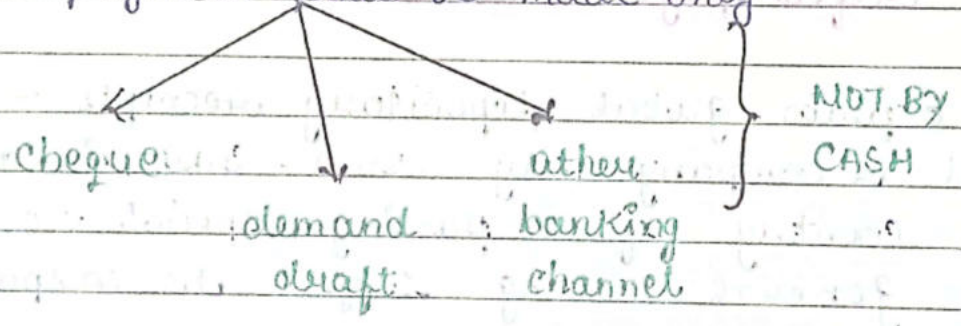
(ii) This offer can be made to maximum 200 person in a financial year.

(Qualified Institutional buyers and employees offer under ESOP shall be excluded in 200)

This limit is applicable per security i.e. 200 for each

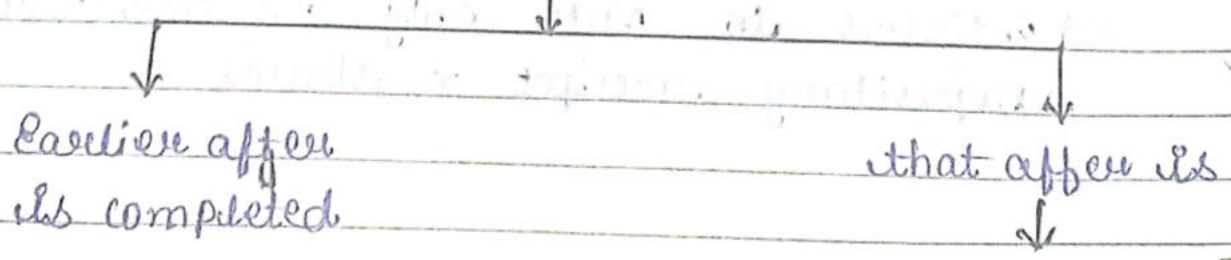


(iii) The payment shall be made only



≠ Money raised cannot be used until shares are allotment and return of allotment is filed with ROC.

(iv) No fresh limitation offer can be made unless -



withdraw 'or' abandoned
by Co.

(i) Co. → can offer multiple offers of private placement. In a FY. subject to aggregate limit of 200 person (per security)

(ii) This rule is applicable for each security

(v) Co. → shall allot securities within 60 days from receipt of application money.

If allotment is not done → refund ≤ 15 days from expiry of 60 days

If not refunded within 15 days → refund along with 12% simple interest from expiry of 60th day.

(vi) After allotment

Co. → file return of allotment → ROC ≤ 15 days

If not filed

Co. / Promoter / Director → liable upto ₹1000/day
Subject to maximum ₹25L

(vii) If any provision = contravened

Co. / Promoter / Director = liable for amount raised through private placement

Min.



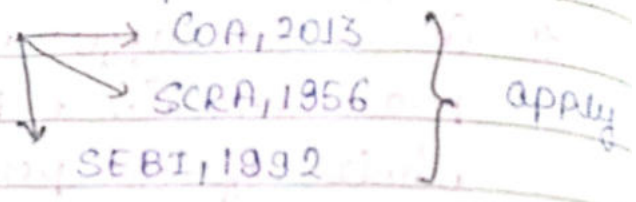
₹ 2 crore

• And

refund the amount with 18% SI within 30 days of order imposing penalty

AND

Such offer will deemed as public offer and requirement of



OB - Que - 3, 4, 5, 7, 8, 10, 21 ^{out 5 notes}