

## UNDERWRITING AND BROKERAGE AGREEMENTS

(l) Underwriting agreements-The object of underwriting is to insure against the risk that shares, debentures or debenture stock offered by a company for subscription may not be taken up. For floatation of share/debenture capital, a company is generally required to have the public issue fully underwritten to insure that all the shares and debentures are taken up by the investor and thus the required capital is raised. The underwritten provides an assurance against the risk of undersubscription .

(a) Payment of commission to underwriter .- The underwriters are entitled to commission. Section 76 of the Companies Act, 1956, provides as follows :  
"76 (1). A company may pay a commission to any person in consideration of-

- (a) his subscribing or agreeing to subscribe, whether absolutely or conditionally for any shares in, or debentures of, the company, or
- (b) his procuring or agreeing to procure subscription, whether absolute or conditional for any shares in or debentures of, the company,

If the following condition are fulfilled, namely :-

- i) the payment of the commission is authorised by the articles ;
- ii) the commission paid or agreed to be paid does not exceed in case of shares five per cent of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less, and in the case of debentures, two and a half per cent of the price at which the debentures are issued for the amount or rate authorised by the articles, whichever is less :
- is- iii) the amount or rate percent of the commission paid or agreed to be paid
  - (a) in case of shares or debentures offered to the public for subscription, disclosed in the prospectus; and
  - (b) in the case of shares or debentures not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed before the payment of the commission with the Registrar and where a circular or notice, not being a prospectus inviting subscription for the share or debentures, is issued, also disclosed in that circular or notice ;
- iv) the number of shares or debentures which persons have agreed for a commission of subscribe absolutely or conditionally is disclosed in the manner aforesaid; and
- v) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.

- 2) Save as aforesaid and save as provided in section 78, no company shall allot any of its shares or debentures or apply any of its moneys, either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of-
- a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in, or debentures of, the company; or
  - b) his procuring or agreeing to procure subscription, whether absolute or conditional, for any shares in, or debentures of, the company whether the shares, debentures or money be so allotted or applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out the nominal purchase money or contract price, or otherwise.
- 3) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.
- 4) A vender to, promoter of, or other person who receives payment in shares, debentures or money from, a company shall have and shall be deemed always to have had power to apply for any part of the shares, debentures or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section.
- (4-A) For the removal of doubts it is hereby declared that no commission shall be paid under clause (a) of sub-section (1) to any person on shares or debenture which are not offered to the public for subscription :
- Provided that where a person has subscribed or agreed to subscribes under clause (a) of sub-section (1) for any shares in, or debentures of, the company and before the issue of the prospectus or statement in lieu thereof any other person or persons has or have subscribed for any or all of those shares or debentures and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus or statement, then the company may pay commission to the first mentioned person in respect of such subscription.
- 5) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.”

LETTER OF ACCEPTANCE

To .....

Dear Sir,

With reference to your application dated.....we accept and admit you as an underwriter of.....ordinary shares of our company at commission of.....per cent, upon the footing and subject to the conditions contained in your application.

Yours, etc.

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