

# PRIVATE PLACEMENT VS. PREFERENTIAL ALLOTMENT

MEANINGS, PROCEDURE AND COMPARISONS

# PRIVATE PLACEMENT

## MEANING:

- Private Placement means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application.
- It is an alternative to an initial public offering (IPO) for a company seeking to raise capital for expansion.

# PRIVATE PLACEMENT

## CONDITIONS:

- Maximum Number of Persons: Not more than 200
- Minimum amount of offer for an individual: Not less than INR 20,000 of face value.
- Mode of Payment: only through banking channels not in cash
- No advertisement of offer
- Minimum gap between two offers- No fresh offer till offer is completed
- Allotment: Securities are to be allotted within 60 days else interest payable on delay.
- Confirm if MOA/AOA permit else amend the same.
- DEMAT of shares of unlisted companies must before offer.

# PRIVATE PLACEMENT

## PROCEDURE

- Intimation to the Stock Exchange
- Convene a Meeting of Board of Directors to approve Private Placement Offer Letter, to identify the group of persons to whom Private Placement shall be made, to fix General Meeting of the Company and approve notice of GM.
- File BR in Form MGT-14 with ROC
- Pass General Meeting Resolution
- File General Meeting resolution in Form MGT-14 with ROC
- Open Separate Bank Account for keeping the monies received on the application.
- Private Placement Offer Letter in Form PAS-4 and send these offer letters either in writing or in electronic mode within 30 days and Company to maintain record of persons to whom the private placement offer letter is sent in Form PAS-5.

# PRIVATE PLACEMENT PROCEDURE CONT..

- Receive the Amount of Subscription
- Allotment of securities by Private Placement  
Make necessary Entries in Registers
  - Private Company shall make necessary entries in the Register of Members, if the shares are not allotted in demat, in Form MGT-1 and in Form MGT-2 within 7 days of the Board Meeting in which the allotment of Debentures was approved.
- File Return of Allotment with ROC within 15 days from the date of allotment in Form PAS-3
- Issue the Relevant Certificates
  - Private Companies which has not allotted shares in demat format shall issue the certificate of shares allotted in Form SH-1 within a period of 2 months from the date of allotment to the respective shareholders after payment of stamp duty to the respective state Government.
  - Private Companies which has not allotted Debentures in demat format shall issue and deliver the debentures certificates within a period of 6 months from the date of allotment.

# PREFERENTIAL ALLOTMENT

## Meaning:

- Preferential Allotment means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date) by a company to any selected person or group of persons, on preferential basis.
- The term “Securities” play a crucial role in interpretation of these two terms. Allotment of any kind of security on a private basis which attracts provisions of Section 42 is called as Private Placement of Securities whereas allotment of equity shares or securities convertible into equity shares attracts both Section 42 and 62(1)(c) and called as Preferential Allotment of securities.
- In simple words Preferential Allotment means Private Placement of equity shares or convertible securities. Therefore, it can be concluded that every Preferential Issue is a Private Placement but vice versa is not true.

# PREFERENTIAL ALLOTMENT

## CONDITIONS:

- Can be made only for equity share or for securities convertible into equity shares.
- Can be issued for cash or for consideration other than cash.
- Needs to be authorized by Articles of Association;
- Board and Shareholders' Approval by way of Special Resolution is required for making Preferential Allotment of specified securities
- Explanatory statement annexed with the Notice of General Meeting in which Preferential Allotment needs to be approved shall contain detailed disclosures as per Rule 13 of Companies (Share Capital and Debenture) Rules, 2014;
- Price of the shares to be determined based upon valuation report from registered valuer.
- Price offered in Preferential Allotment issue shall not be less than the price determined by the Registered valuer;
- The offer can be made to any person whether they are equity shareholders and employees of the company or others.

# PREFERENTIAL ALLOTMENT

## PROCEDURE:

- Convene Board Meeting and consider below given matters:-

Consider the valuation report as received.

Deciding the list of allottees (not exceeding more than 50 at a time and 200 aggregate in the financial year excluding the qualified institutional buyer)

Fix day, date, venue and time of extraordinary general meeting

Finalization of draft offer letter in the form PAS-4

Finalization of notice for extraordinary general meeting along with the explanatory statement as required in the law.

Decide the offer period

- Open a separate bank account in a scheduled bank to receive money.



# PREFERENTIAL ALLOTMENT- PROCEDURE CONT..

- Convene extraordinary general meeting and passing of resolution for allotment.
- File MGT-14 and then the private placement offer letter i.e. PAS-4 cum application shall be dispatched to the proposed allottees with the following attachments:
  - Certified true copy of the special resolution
  - Explanatory statement
- Dispatch private placement offer letter cum application to the proposed allottees within thirty days, either in writing or in electronic mode.
- Proposed Allottees shall subscribe to the shares in the private placement offer letter cum application along with the subscription money paid either by cheque or demand draft or other banking channel but not by cash whatsoever.
- The money as received shall be deposited in a separate bank account.
- Convene Board Meeting for the allotment of shares within 60 days of receipt of money.
- File PAS-3 within fifteen days of allotment of shares

# PREFERENTIAL ISSUE VS. PRIVATE PLACEMENT

## PRIVATE PLACEMENT

- Can be made to any person as identified by the Board.
- Offer Letter for Private Placement shall be in prescribed format i.e. Form PAS – 4
- Payment only through banking channels and not in cash.
- Time limit for allotment of securities is within 60 days of receipt of subscription money

## PREFERENTIAL ISSUE

- Can be made to members, employees or any other persons.
- No particular form prescribed.
- Payment can be made through cash or for consideration other than cash.
- Equity shares and convertible securities shall be issued within 12 months from the date of passing Special Resolution

# PREFERENTIAL ISSUE VS. PRIVATE PLACEMENT

## PRIVATE PLACEMENT APPLICABLE PROVISIONS

- (i) Section 42: Private Placement
- (ii) Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014
- (iii) Section 55: Private Placement of Preference Shares
- (iv) Section 71: Private placement of debentures
- (v) Section 180(1)(c): Maximum Limit for raising NCDs

## PREFERENTIAL ISSUE APPLICABLE PROVISIONS

- (i) Section 62(1)(c): Preferential Allotment
- (ii) Section 42 of the Companies Act, 2013;
- (iii) Rule 13 of the Companies (Share Capital and Debentures) Rule, 2014;
- (iv) Rule 14 of the Companies (Prospectus and Allotment of Securities) Rule, 2014.

# THANK YOU!

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