Issue and Allotment of Shares, Rights issue, Private Placement and Preferential Allotment

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Modes of Raising Capital

- Public Issue
- Rights Issue
- Private placement

Scope

- Section 62
- Section 42
- Section 39
- Relevant Rules

Further Issue of Share Capital (Section 62)

Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

- to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer
- to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or
- to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clauses above

Rights Issue

- ‘Right Issue’ means offering shares to existing members in proportion to their existing share holding.
- Offer Letter (15 to 30 Days)
- Pre-emptive Rights
- Right of Renunciation (Renouncee need not be member)
- Application for Allotment of Shares along with Application Money
- Return of Allotment

Preferential Allotment

- Section 62 along with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 and
- Section 42 along with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes the procedures and provisions for preferential allotment of shares.
- Regulations 158-170 deals with Preferential Issue as per SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 .

What is Preferential Allotment?

- A preferential issue is an issue of shares or convertible securities by listed or unlisted companies to a select group of investors, but it is neither a rights issue nor a public issue

Why companies do preferential allotment?

- Companies go for preferential allotment as it is one of the fastest way to increase shares capital and bringing capital in company.
- Moreover, when a company raise capital in this way it becomes the asset of company as it leads to increase in existing shares capital. The allottee/(s) become members of the company and this fund is considered as owned fund.

APPLICABLITY OF PREFRENTIAL ISSUE AND MEANING OF SECURITIES AS PER SECTION 62 OF COMPANIES ACT, 2013.

Which companies can do preferential allotment?

- Any company can for preferential allotment, whether it’s a Public or private, listed or unlisted, Section 8 Companies, etc

What kind of securities are covered under preferential allotment?

- This Section specifically covers the “shares or other securities” 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.

CONDITIONS FOR PREFERENTIAL ISSUE

A listed issuer making a preferential issue of specified securities shall ensure that:

- all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
- a special resolution has been passed by its shareholders;
- all equity shares held by the proposed allottees in the issuer are in dematerialised form;
- the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, as amended, and any circular or notification issued by the Board thereunder;
- the issuer has obtained the Permanent Account Numbers of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account Number for transacting in the securities market by the Board.

PROCEDURE FOR ALLOTMENT OF PREFRENTIAL ISSUE OF SHARES

- Send notice to convene a Board Meeting at least seven days before the meeting.
- Convene Board Meeting and consider below given matters:
- Consider the valuation report as received.
- Deciding the list of allottees
- 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.

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- 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

Private Placement

- “any offer or invitation to subscribe for the securities or issue the same to a selective group of people.” (Explanation I to sub-section 3 of Section 42)
- Companies (Prospectus and Allotment of Shares) Rules, 2014 are applicable
- Number of identified persons [Section 42(2)]: Cannot be more than 50
- Details of identified persons [Section 42(3)]: The Company Shall maintain the Details of Identified People
- The Company Shall Pass the Special Resolution at General Meeting
- Every identified person who is willing to subscribe to the offered securities shall have to apply for private placement along with subscription money (Section 42(4))
- After the application money has been paid by the identified persons, the company shall allot the securities within 60 days from the date of the application money. (Section 42(6))

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- offers of private placements can be made to no more than 200 people in a given financial year. [Rule 14(2)(b)]
- The value of the offer made to each person must not be less than Rs. 20,000. [Rule 14(2)(c)]
- The company needs to file a return allotment through the Registrar of the Company (“ROC”) within 15 days from the date of the allotment.[Section 42(8)]
- The Funds can be utilized only after filing return of Allotment [Section 42(6)]
- Prohibition of Advertisement [Section 42(7)]

Advantages of Private Placement

- A cheaper way of raising capital
- Easier compliance formalities
- Companies enjoy confidentiality
- Benefits of expert advice
- A greater degree of control

Difference Between Preferential allotment and Private Placement

- Section 42 provides for a general provision regarding allotment of securities of any kind whereas Section 62(1)(c) provides for a specific provision of allotment of equity shares or for securities convertible into equity shares.
- In Private Placement any security including Equity shares, Preference shares or Debentures can be issued. In Preferential Allotment only Equity shares and other securities convertible into Equity shares can be issued.
- Private Placement can be made to any person as identified by the Board, on the other hand Preferential Allotment can be made to members, employees or any other persons.
- Offer Letter for Private Placement shall be in prescribed format i.e. Form PAS – 4 but not such any format has been prescribed for Preferential Allotment.
- The payment of subscription of securities in Private Placement can be made through any banking channel but not in cash but in Preferential Allotment payment can be made through cash or for consideration other than cash.
- Time limit for allotment of securities in Private Placement is within 60 days of receipt of subscription money and in Preferential Allotment equity shares and convertible securities shall be issued within 12 months from the date of passing Special Resolution.

Allotment of Securities (Section 39)

- No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid
- The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned.
- Whenever a company having a share capital makes any allotment of securities it shall file return of allotment (PAS 3)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==

Thank you