



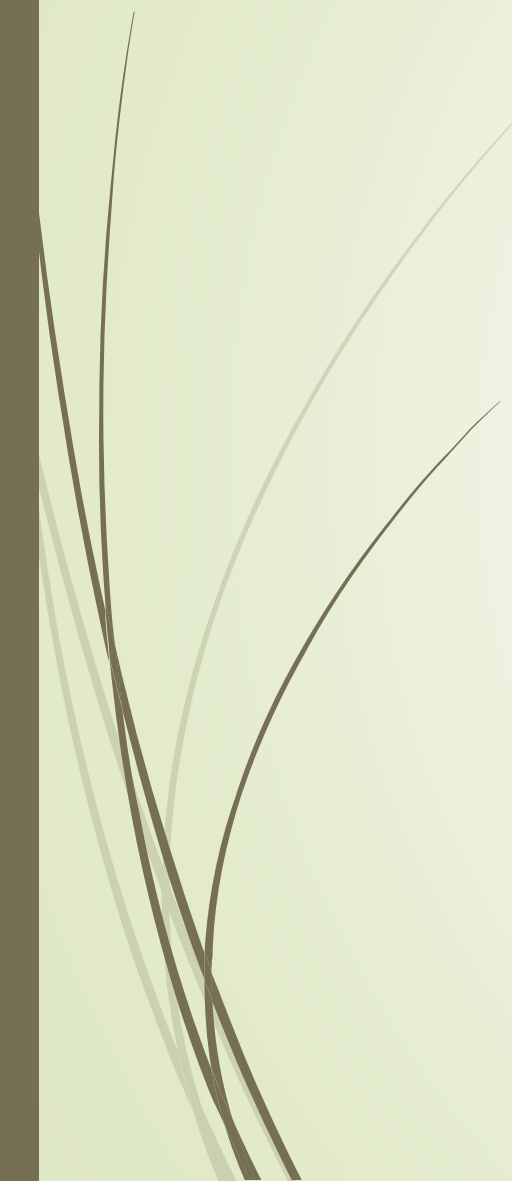
Private Placement of Shares

Companies Act, 2013

(As amended by Companies Act, 2017 & Rules framed thereunder)



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Evolution of Private Placement

Corresponds to the provisions of Section 67 of the Companies Act, 1956: which was based on the recommendation of the Cohen Committee.

Companies Amendment Act, 2000:

- i. Sub-section 3(1)
- ii. Sub-section 3(2)
- iii. Sub-section 3A

Reference to a case law Sahara India Real Estate Corporation Limited Vs. SEBI (2011)

What is Private Placement?

Any offer of securities or invitation to subscribe to securities to a select group of person by a Company (other than by way of public offer) through issue of private placement offer



Which satisfies the conditions specified in Section 42 of the Companies Act; 2013



Private Placement



PROVISIONS OF PRIVATE PLACEMENT

Private Placement:

Section 42 of the Companies Act, 2013 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

An offer of securities or invitation to subscribe securities, shall be made to not more than 200 persons in the aggregate Financial Year (excluding QIB's, and Employees of the Company being offered securities under employees stock option as per the provisions of Section 62(1)(b));

No fresh offer shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the Company;

A company making an offer or invitation under this Section shall allot its securities within 60 days from the date of receipt of application money; if the Company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the date of completion of 60 days and if the Company fails to repay the application money within the aforesaid period it shall be liable to repay that money with interest at the rate of 12% p.a. with the expiry of the sixtieth day;

PROVISIONS OF PRIVATE PLACEMENT

Private Placement:

Section 42 of the Companies Act, 2013 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than:

- a) for adjustment against allotment of securities; or
- b) for the repayment of monies where the Company is unable to allot securities

Offer shall be given to such persons whose name are recorded by the company prior to invitation to subscribe and such person shall receive the offer by name (Intimation to Registrar within 30 days)

No Company offering securities shall make public advertisement or utilise any other media, marketing and distribution channels.

A private placement offer letter (Form PAS-4) shall be accompanied with application form serially numbered and address specifically to the person to whom the offer is made and shall be sent wither in writing or electronic mode within 30 days of recording of names.



What is Preferential Offer

Preferential Offer

- Means an issue of shares or other securities , by a company to any selected person or group of persons on preferential basis; and
- does not include shares or other securities offered through a public issue, right issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities

Share or other securities

- Share and 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

PROVISIONS OF PREFERENTIAL ALLOTMENT

Issue of Share on Preferential Basis

The issue is authorised by the articles of association

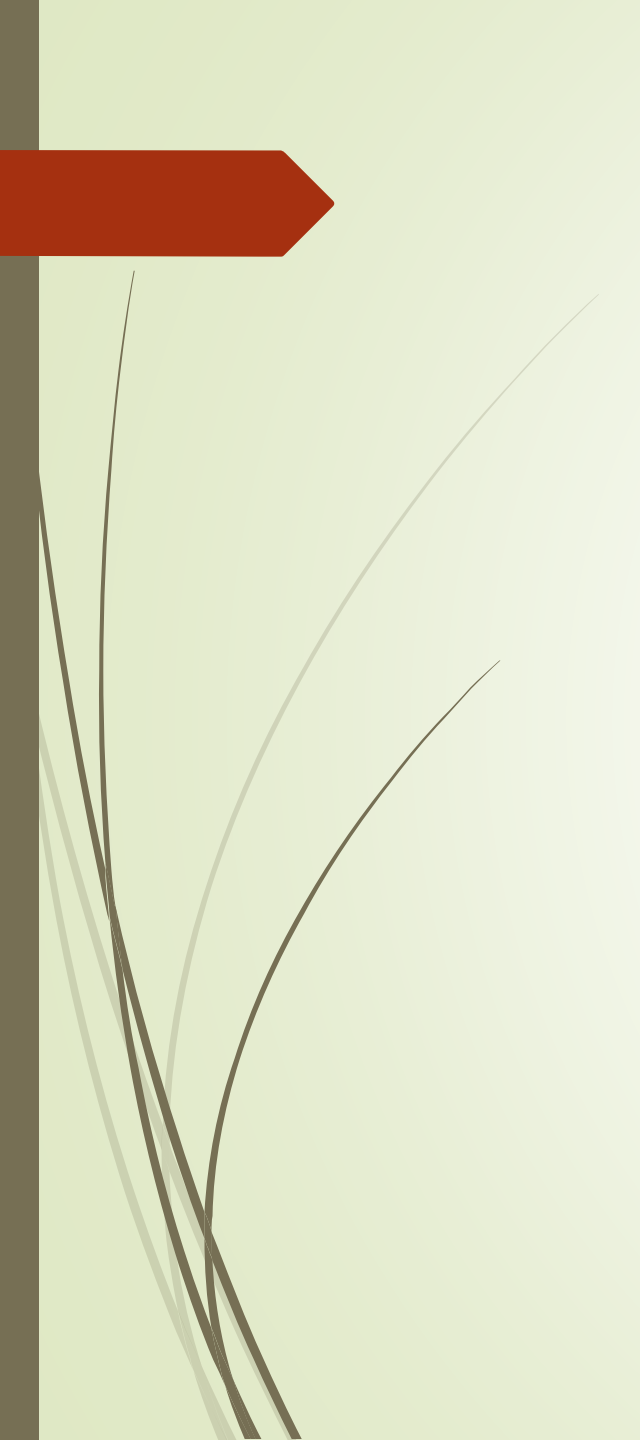
Section 62(1)(c) of the Companies Act, 2013 read with Rule 13 of Companies (Share Capital and Debentures) Rules; 2014

If authorised by Special resolution, passed in the general meeting; shares may be issued in any manner whatsoever including by way preferential offer, to any person and such issue on preferential basis shall comply with the conditions laid down under Section 42 of the Act

In case of preferential offer made by the Company to the existing members only, then preparation & submission of Form PAS-4 and Form PAS-5 to registrar is not required as the provisions of sub-rule (1) to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply

PROVISIONS OF PREFERENTIAL ALLOTMENT

- ▶ The Disclosure in explanatory statement to be annexed with the notice of general meeting pursuant to Section 102 of the Act:
 - (i) the objects of the issue;
 - (ii) the total number of shares or other securities to be issued;
 - (iii) the price or price band at/within which the allotment is proposed;
 - (iv) basis on which the price has been arrived at along with report of the registered valuer;
 - (v) relevant date with reference to which the price has been arrived at;
 - (vi) the class or classes of persons to whom the allotment is proposed to be made;
 - (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;

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- (viii) the proposed time within which the allotment shall be completed;
 - (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
 - (x) the change in control, if any, in the company that would occur consequent to the preferential offer;
 - (xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
 - (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
 - (xiii) The pre issue and post issue shareholding pattern of the company in the following format specified t herein



Difference between Private Placement & Preferential Allotment

In terms of Rule 13(1) of Companies (Share Capital and Debentures) Rules, 2014 ; Non-Convertible and Redeemable Preference Shares or Debentures would not fall under the scope of Preferential Issue of Shares under Section 62(1)(c) of the Companies Act, 2013.

Proposed Changes with Companies (Amendment) Act, 2017- Yet To Be Notified

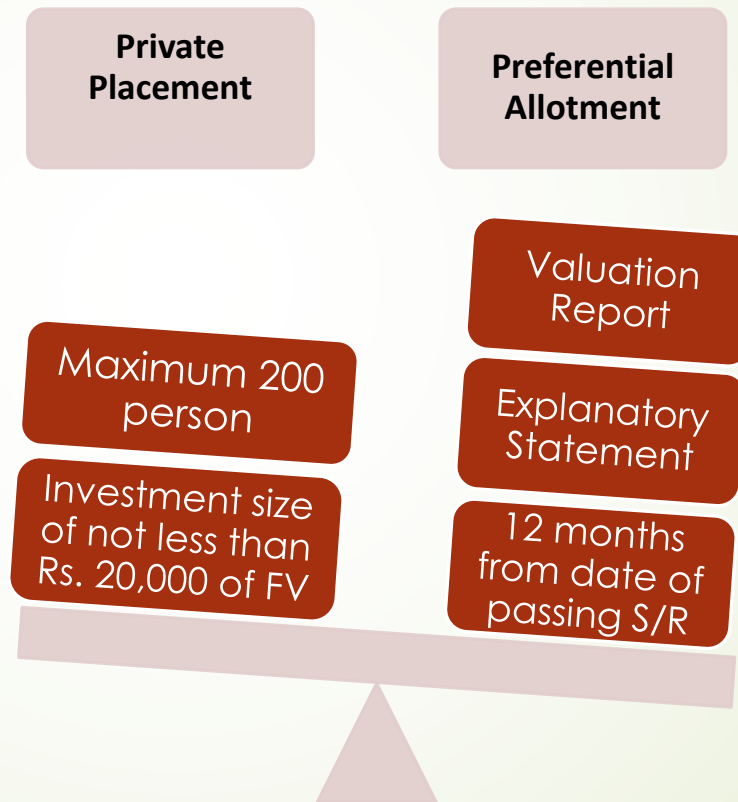
Specifically mentioned that the private placement offer shall not carry any right to renunciation.

Money raised through private placement issue can only be utilised once the allotment is made and the return of allotment is filed with the Registrar of Companies;

Return of allotment to be filled with the Registrar within 15 days from the date of allotment

Penal Provisions for defaulting in filing the return of allotment (Promoters and Directors of the Company shall be liable to penalty for each default of Rs. 1000/- for each day during which such default continues but not exceeding Rs. 25 lakh Rupees)

COMPARATIVE STUDY- PRIVATE PLACEMENT & PREFERENTIAL ALLOTMENT

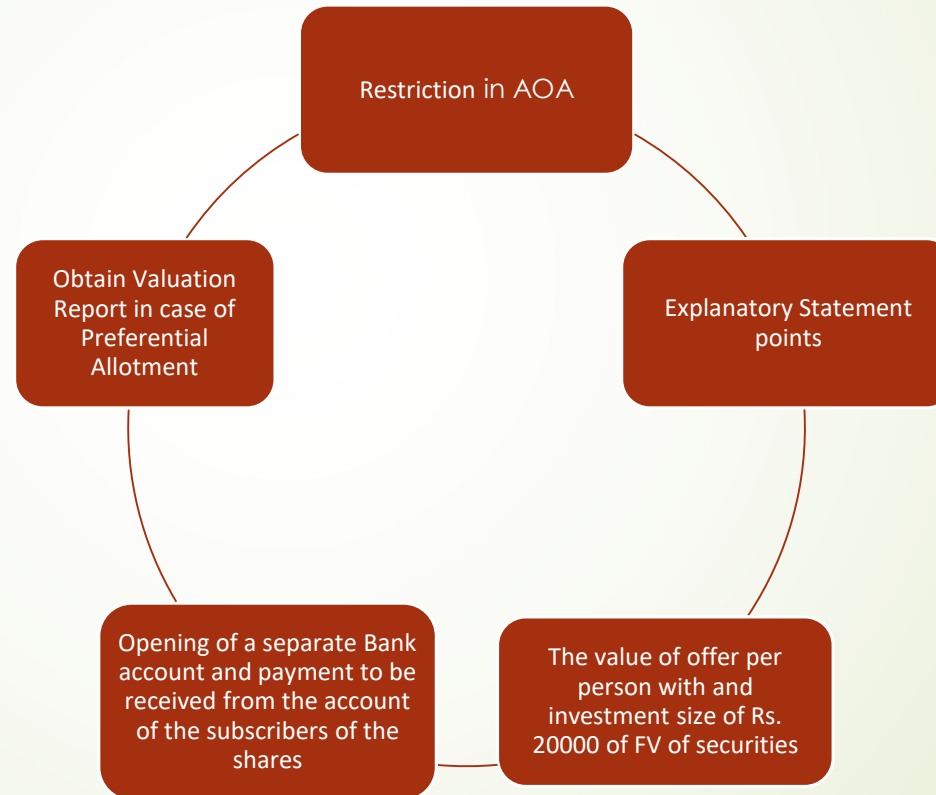




PROCESS TO BE FOLLOWED

- Check whether any restrictions on AOA is there pertaining to Preferential Issue of Shares;
- Preparation of Form PAS-4 and Form PAS-5;
- Convene a Board Meeting to consider the proposal of the issue of Securities by way of Private Placement and for calling and convening an Extra-ordinary General Meeting;
- Circulation of Notice to the shareholders of the Company;
- Convening the General Meeting, and obtain the shareholder approval by way of Special Resolution in the proposed resolution;
- Filing of Form GNL-2 (for Form PAS-4 and for Form PAS-5);
- Filing Form MGT-14 for w.r.t. to Special resolution's
- Check whether the share application money along with the duly signed share application form has been received within the offer period;
- Call and convene a Board Meeting for allotment of shares to the investors and Filling of Form PAS-3 (Return of Allotment) to RoC

POINTS TO BE KEPT IN MIND





FAQ's ?.....

- What is the maximum number of offer in a Financial Year?
- What is the maximum gap between two offer?
- What should be the offer period for issue of Shares on Preferential Basis?
- Whether valuation report is mandatory in case of private placement?
- Who can issue Valuation Report?
- Can we issue Preference Shares with 0% Dividend Rate ?
- Can preference shares be give right to vote at pari-passu with Equity Shares?



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