

PRIVATE PLACEMENT: MEANING & PROCEDURE TO ISSUE SHARE UNDER COMPANIES ACT 2013

The companies act 2013 has formally Introduced the concept of private placement, which earlier was operating through practice and experience with support of certain provisions scattered over various section.

Section 42 of new companies act-2013 defines the concept of "private placement"

"Private Placement" means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section"

As per new act private placement by private limited companies also requires issue of offer letter. So the procedure to issue shares through private placement is also applicable for private companies.

However private companies may get exemption from above regulation as per draft notification by Companies act -2013.

Other major points regarding Private placement are given below -

- An offer can be made under a Private Placement Offer Letter to not more than 200 people. The limitation of allotment to 200 people is not just restricted to 200 people but even an invitation to subscribe cannot be made to more than 200 people.
- The 200 people limit excludes Qualified Institutional Buyers and Employees and the limit of 200 people is calculated individually for each kind of security. Obviously, there cannot be a public announcement of such offers.
- The application form has to be numbered and addressed specifically to the person to whom the offer is made along with the Offer Letter. Allotments can be made only to such persons
- The value of the Offer per person shall not be less than INR 20,000 of 'face value' of securities. The payment for subscription should be through the bank account of the person subscribing to the securities and the company should keep a record of the bank account from where such payments have been received. No cash transaction is permitted. The money so received shall be kept in a separate bank account of the company and utilised only for allotment (or repayment).
- The price of the security has to be justified and the inference is that, it requires a valuation report by a Registered Valuer (can be a company secretary, chartered accountant or a cost accountant)
- Non-compliance can lead to a penalty of INR 2 crores or the amount involved in the offer, whichever is higher.

PROCEDURE FOR PRIVATE PLACEMENT OF SHARES

Section (1)(c) read with Sec-42

1. Check Provision in Article regarding Private Placement
2. Call Board Meeting:

- To Prepare Offer Letter
- Make Proposal for Private Placement
- Prepare list of persons to whom option will be given
- Call Extra ordinary General Meeting

3. Call Extra ordinary General Meeting:

- Pass Special resolution- will be valid for 12 month
- If not completed private placement in 12 Month pass another Special resolution
- Approve Draft Offer Letter by Special resolution

4. File MGT-14 with ROC Attachments:

- - Notice of EGM
- - CTC of SR
- - Minutes

5. Issue offer letter in PAS-4 within 30 days of record of name of persons:

- Application form serially numbered
- Address to the persons to whom the offer is made

6. Prepare complete record of Private Placement in PAS-5

7. File PAS-4 + PAS-5 with ROC within 30 days of issue of offer letter in GNL-2

8. Make Allotment of shares within 60 days of receipt of Money from the persons to whom right was given.

9. Call Board Meeting for allotment of shares

10. File PAS-3 with Roc within 30 days if Allotment.

Attachments:

- - List of Allottees
- - BR for allotment of share

11. File Form MGT-14 along with Resolution pass in Board meeting for allotment of shares.

12. Issue Share Certificates.

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