# PRIVATE PLACEMENT OF SHARES

**SECTION 42 of Companies Act, 2013**

**Read with**

**Rule 14 of Companies (Prospectus and allotment of Securities) Rules, 2014**

## MEANING OF PRIVATE PLACEMENT OF SHARES

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 section 42.**

## PROCEDURE FOR PRIVATE PLACEMENT OF SHARES

| **Steps** | **Particular of Compliances** | **Documents we should prepare according to Compliances** |
|---|---|---|
| 1 | To decide the person or group of person to whom shares to be issued through Private Placement | Company shall prepare a complete List of proposed allottes in Form **PAS-5** |
| 2. | 1. Prepare Private Placement Offer Letter in prescribed **form PAS-4.**<br>2. Prepare Application form (format of such Application form has not been prescribed under the Act.) | **Note:**<br>1. An **application form** shall be serially numbered and **specifically** mentioned the **address of the persons to whom the offer is to be made.**<br>2. **Private Placement Offer Letter** and an **application form** shall be (in writing or in electronic mode) sent to the persons *within thirty days* from recording the names of such persons in **form PAS-5.** |
| 3. | **Hold a Board Meeting** :- | 1. Notice of general meeting along with |

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<tr><td></td><td>Consider following business:-<br><br>1. To decide on the proposal of Private Placement of the Securities.<br><br>2. To Approve Private Placement Offer Letter and Application form.<br><br>3. To take Note of List of proposed Allottees to whom Private Placement is to be made.<br><br>4. To authorise a person who shall handle all the activities of said issue.<br><br>5. To approve and open Separate Bank A/c in Scheduled Bank.<br><br>6. To fix time, date and venue for holding general meeting (GM) of company for passing special resolution.<br><br>7. To approve notice of GM along with the explanatory statement.<br><br>8. To authorise any person to sign and issue the notice of General Meeting.</td><td>explanatory statement.<br><br>Note: - in the explanatory statement Shall be disclosed the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.<br><br>2. To prepare Board meeting minutes. to cover all required business.<br><br>3. 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—<br><br>(a) for adjustment against allotment of securities; or<br><br>(b) for the repayment of monies in case the company is unable to allot securities</td></tr>
<tr><td>4.</td><td>Hold General Meeting and pass the Special Resolution for Private Placement.</td><td>To prepare minutes of the General Meeting</td></tr>
<tr><td>5.</td><td>Company shall file Private Placement Offer Letter and complete List of proposed allotees with ROC in Form PAS-3</td><td>Within Thirty days from the circulation of private Placement offer Letter.<br><br><u>Attachment :</u><br><br>1. Private Placement Offer Letter.<br>2. List of proposed Allottees.</td></tr>
<tr><td>6.</td><td><u>Hold a Board Meeting</u> :-</td><td>Note:<br>1. A company shall allot its securities within</td></tr>
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|---|---|---|
| | To pass the resolution for allotment of securities to the applicants. | **sixty days** from the date of receipt of the application money on such securities.<br><br>2. if the company is not able to allot the securities within said period:<br><br>➢ it shall repay the application money to the subscribers **<u>within fifteen days</u>** from the date of completion of sixty days and<br><br>➢ 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%** per annum from the expiry of the sixtieth day: |
| 7. | To file Return of allotment with ROC in **e-form PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 | **Within Thirty days** from the date of Allotment of Securities.<br><br>**<u>Attachment :</u>**<br><br>Full details of all security holders as per Rules of the Act:<br>(i) the full name, address, Permanent Account Number and E-mail ID of such security holder;<br><br>(ii) the class of security held;<br><br>(iii) the date of allotment of security ;<br><br>(iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash. |

# IMPORTANT POINTS FOR ISSUE OF SHARES ON PRIVATE PLACEMENT BY A COMPANY

- **Special Resolution** for each offer
- **Private Placement offer letter**, Form PAS 4, to be issued to such persons whose name are recorded by the Company;
- Such offer not to be made to **not more than 200 persons** in aggregate in a financial year (QIB and person to whom ESOP are being issued not included in 200);
- Investment size per person shall **not be less than Rs.20,000/-;**
- All monies payable towards subscription to be received **ONLY** by Cheque / draft / other banking channel but **NOT BY CASH;**
- Company to **keep record of Bank Account** from where such subscription amount is being received;
- Share to be allotted only to the person from whom money is received;
- Share to be allotted **within 60 days** from the date of receipt of money. Else money to be **refunded within 15 days** from the date of completion of 60 days. If the company is not able to make payment within the said 15 days, then it shall be liable to repay the money with interest at 12% ;
- Money received to be kept in **separate bank account** and to be used only for allotment of shares or refunding back to the applicant;
- No fresh offer to be made unless allotment with respect to **previous offer** has been **completed**;
- Company to maintain complete **record of private placement offers** in the Form PAS 5. A Copy of the same has to be filed along with PAS 4 with the Registrar;
- **Return of Allotment** of securities to be filed in Form PAS 3 along with list of allottees;
- If offer made is **not in compliance** with this Section, then the same shall be **treated as "Public Offer"** and all the rules of Public offer to be complied with;

## PENAL PROVISION

If a company **contravenes** this Section and makes an offer, then company, promoters and directors will be **liable**

- to the extent of **amount involved** in the offer
- **or Rs.2 Crores, whichever is higher**,
- and the company shall **refund all the monies** to the subscriber within a period of 30 days of the order imposing penalty;

# <u>Record of a private placement offer to be kept by the company-PAS 5</u>

**FORM PAS – 5**
**[Section 42 (7) and Rule 14(3) of *Companies (Prospectus and Allotment of Securities) Rules, 2014]***

**Record of a private placement offer to be kept by the Company**

NAME OF THE COMPANY:
REGISTERED OFFICE OF THE COMPANY:
CIN:

**DETAILS OF PRIVATE PLACEMENT OFFER**

Date of Special Resolution:

Date of Board Resolution:

Amount of the offer: Rs. /- (Rupees)

Date of Circulation of private placement offer letter:

Details of the person to whom private placement offer letter has been circulated:

| | |
|---|---|
| Name | |
| Father's Name | |
| Address | |
| Phone Number | |
| e-mail ID | |
| Initial of Compliance Officer | |