

## **PROCESS TO RAISE CAPITAL FOR UNLISTED COMPANIES UNDER NEW COMPAN**

### **CS DIVESH GOYAL**

#### **1. PROCEDURE FOR ALLOTMENT OF SHARES:**

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- ❖ Call a Board meeting by issue notice of meeting. (Draft Format Attached)
- ❖ Approve right issue including "letter of offer", which shall include right of renunciation also.(At Board Meeting). (Draft Format Attached)
- ❖ Send offer letter to all existing members as on the date of offer.(Through registered post or speed post or through electronic mode to all the existing share -holders at least three days before the opening of the issue.)
- ❖ Receive acceptance/renunciations/rejection of rights from members to whom offer has been sent & also from persons in whose favour right renounced.\* (Draft Format Attached)
- ❖ Call a Board meeting by issue of notice.
- ❖ Approve allotment by passing of Board Resolution. (Draft Resolution Attached)
- ❖ Issue of share certificates.
- ❖ Authorize to two directors and one more person for signature on Share Certificates.
- ❖ Attach list of allottees in form PAS-3: Mentioning Name, Address, occupation if any and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the form pas-3.
- ❖ Authorize a director to file E-form PAS 3(Return of Allotment) to ROC within 30 days of passing of Resolution. (Draft Resolution Attached)
- ❖ Authorize a director to file E-form MGT 14 for issue of share certificate within 30 days of passing of Resolution.\*
- ❖ File E-form MGT 14 for issue of share (Allotment of shares & Issue of share certificate: Refer 4 below) & PAS 3(Return of Allotment) to ROC for allotment\*
- ❖ Issue share certificate\*
- ❖ Make Allotment within 60 days of receiving of Application Money; otherwise it will treat as deposits as per deposits rules.

FIND ATTACHED BELOW:

- ✚ Notice Calling Board Meeting.
- ✚ Format of Agenda.
- ✚ Attendance Sheet.
- ✚ Leave of Absence of Director.
- ✚ Board Resolution for Right Issue.
- ✚ Share Application Form
- ✚ Rejection form Existing Share Holder.
- ✚ Acceptance from Share Holders.
- ✚ Resolution for Allotment of Shares.
- ✚ Resolution for Authorization to sign Share Certificates.
- ✚ If Any other Draft Require contact me on mail ID given below:

2. MGT14 is not required to be filed for allotment of shares; however, it is required to be filed for Issue of shares:

- As per sec 179(3)(\*c\*), the Board of Directors of a company shall exercise the powers to "ISSUE" securities on behalf of the company by means of resolutions passed at meetings of the Board.
- As per sec 117(1) & (\*3\*), such resolutions are to be filed to ROC.
- It has been decided that allotment of shares & issue of share are different.
- To avoid dispute, it is suggested to pass both resolutions i.e.
  - ✓ For allotment of shares as well.
  - ✓ For issue of share certificate in same meeting & file with ROC in MGT14.

3. Why it is safer to renounce right in favour of member ?\*

The issue of further shares by a company to its members with the right to renounce them in favour of third parties does not require the issue or registration of a prospectus. However, there is no such circular under Companies Act, 2013.

4. Example:

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1. A Pvt Ltd is having two members; Mr Y & Mrs Y. Co wants to raise Rs 2 Lakhs by issue of equity shares. Mr Y & Mrs Y do not want to invest further. Even Mr Y wants to sell some shares. However, Mr Z wants to invest in the Company. **It is very costly & complex for company to follow private placement provisions.**

**Solution:** Mr Z purchases 200 shares from Mrs Y. Now , company have 3 members: Mr Y, Mrs Y & Mr. Z. **Company comes with right issue, the process of which is very simple** i.e. by calling a Board meeting , without opening new bank a/c, without valuation of shares, without need to pass SR in general meeting. Mr A & Mrs A renounced right in favour of C & company able to raise fund easily.

### 5. Relevant provisions of Companies Act-2013 are as follows:\*

**Sec 62. (1):** 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 subject to the following conditions, namely:-
  - The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
  - Unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (above) shall contain a statement of this right;
  - After the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

The notice referred above shall be dispatched through registered post or speed post or through electronic mode to all the existing share -holders at least three days before the opening of the issue.

(Author - CS Divesh Goyal, ACS is a Company Secretary in Practice from Delhi and can be contacted at [csdiveshgoyal@gmail.com](mailto:csdiveshgoyal@gmail.com)) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written consent of the author

Regards,  
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Practicing Company Secretary

**DRAFTS ATTACHED BELOW:**

## **DRAFTS FORMATS**

### **1. Notice Calling Board Meeting:**

Date of issue of Notice

Name of Director

Address of Director

#### **NOTICE FOR THE MEETING OF THE BOARD OF DIRECTORS OF Name of Company----- LIMITED**

Dear Mr. **Name of Director**,

Notice is hereby given that a meeting of the Board of Directors of the Company shall be held as per the following schedule:

Date:            of Meeting  
Time:            of Meeting  
Venue:          of Meeting

The agenda for the meeting is enclosed.

You are requested to make it convenient to attend the above meeting.

For **Name of company LIMITED**

\_\_\_\_\_  
**Name of Director**

(DIRECTOR)

DIN: -----

Add: of Director

## **2. AGENDA OF BOARD MEETING:**

### **AGENDA**

**AGENDA FOR THE MEETING OF BOARD OF DIRECTORS TO BE HELD ON  
-----DAY OF-----MONTH, 2014 AT -----TIME OF MEETING  
AT ADDRESS OF PLACE OF MEETING**

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1. To Appoint Chairman of the meeting.
2. To Grant leave of absence.
3. To Confirm minutes of the previous Board Meeting.
4. **To ADD MORE AGENDA'S ACCORDING TO REQUIREMENT**
5. To give Vote of Thanks.

**Signature**

**Name of Director**

(DIRECTOR)

DIN: -----

Add: of Director

## **3. ATTENDENCE SHEET OF BOARD MEETING:**

### **DIRECTORS MEETINGS** **ATTENDANCE SHEET**

**ATTENDANCE SHEET OF THE MEETING OF BOARD OF DIRECTORS OF  
M/S NAME OF COMPANY LIMITED HELD ON -----DAY OF-----  
MONTH OF, 2014 AT REGISTERED OFFICE OF COMPANY.**

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| <b>NAME</b> | <b>SIGNATURES</b> |
|-------------|-------------------|
|-------------|-------------------|

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#### **DIRECTORS:**

- 1) Mr. Name of Director
- 2) Mr. Name of Director
- 3) Mrs. Name of Director

#### **SPECIAL INVITEE:**

- 4) If any;

#### **4. LEAVE OF ABSENSE:**

From:

Mr. Name of director who is on leave  
Address of Director.

Date of Leave of Absence before Meeting

The Board of Directors  
M/s NAME OF COMPANY LIMITED  
ADDRESS OF REGISTERED OFFICE

Subject: Leave of Absence

Dear Sir,

With reference to the board meeting of the company to be held on date of meeting, it is hereby submitted that due to preoccupations, I am not in a position to attend the same. You are requested to grant the leave of absence.

Thanking you,

**Name of Director who is on leave**

DIN: -----

Address of Director

#### **5. RIGHT ISSUE RESOLUTION OF BOARD MEETING:**

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**CERTIFIED COPY OF RESOLUTION PASSED IN THE BOARD MEETING OF DIRECTORS  
OF NAME OF COMPANY LIMITED HELD ON -----DAY OF-----MONTH, 2014  
AT PLACE OF MEETING.**

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"**RESOLVED THAT** in pursuance of Section 62 of the Companies Act, 2013 read with The Companies (Share Capital and Debenture) Rules, 2014 the approval of the Board be and is hereby accorded to the Company to issue -----No. of equity shares of Rs. ----- each (hereinafter referred to as new shares) of an aggregate nominal value of Rs. -----  
------(Rupees in Word), for cash to the shareholders at a premium of Rs. -----

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---(if any) per share determined by the Chartered Accountants firm, which was accepted by the Board of Directors as reasonable and in the interest of all concerned, such issue to be made on the following terms and conditions:-

- 1) The issue of shares will be made in the proportion of one new share for every one equity share held on DATE OF MEETING.
- 2) The said offer to the members shall be made by an offer letter which shall indicate the number of shares held by each member and the number of shares to which each is entitled as rights shares, the value per share and the total amount due in case the offer of shares is accepted in full.
- 3) The aforesaid offer shall be valid upto the MAXIMUM 30 DAYS , and includes a right exercisable by the person to whom the aforesaid offer being made to renounce the new shares offered to him in favour of any other person.
- 4) The offer after the expiry of the MAXIMUM 30 DAYS FROM MEETING or on receipt of earlier intimation from the person(s) to whom such notice was given that he declines to accept the new shares offered, the Board of Directors of the company be authorized to dispose of unsubscribed part of the new shares in such manner as they think most beneficial to the company.
- 5) The Equity Shares so issued shall upon allotment have the same rights of voting as the existing equity shares and be treated for all other purposes pari-passu with the existing equity shares of the Company and that the equity shares so allotted during the financial year shall be entitled to dividend, if any, proportionately in the year of the allotment of these shares.
- 6) The allotment of further shares to Non-Residents members shall be in accordance with the Regulations issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999.
- 7) Share Certificates shall be issued to those to whom the further new shares are allotted within the time prescribed in the Companies Act, 2013.

RESOLVED FURTHER that the Board of Directors be and is hereby authorize to take all steps to implement the above resolutions, finalize and issue the letter of offer of rights and take all actions in connections with the further issue and allotment of shares to the members and others where applicable”.

Certified true copy

For NAME OF COMPANY Limited

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NAME OF DIRECTOR

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Director

DIN:

ADDRESS OF DIRECTOR

## **6. SHARE APPLICATION FORM:**

From NAME OF SHARE HOLDER  
: ADDRESS OF SHARE HOLDER:

To: The Board of Directors,  
NAME OF COMPANY,  
ADDRESS OF REGISTERED OFFICE

Dear Sirs,

We hereby apply for the \_\_\_\_\_Shares of the Company, having a face value of Rs \_\_/- per \_\_, as stated below in BLOCK 3. We have remitted the amount specified in Block 5 being the amount payable on application @ Rs -----/- per equity share (inclusive of share premium of Rs----- ----/- per share).

We agree to accept the equity shares applied for or such lesser number as may be allotted to us by the Company subject to the terms and conditions set forth in letter of offer and mutually agreed between us and the and the Company subject to the provisions of Foreign Exchange Management Act, 1999 and the Rules /Regulations/Notifications/Guidelines issued by the Govt of India/Reserve Bank of India in this behalf and the provisions of the Companies Act, 2013 and the rules and regulations made thereunder and the provisions of the Memorandum and Articles of Association of the Company, this Application Form, Share Certificates and any other Law, Rules and Regulations and other documents as may be relevant/applicable, if any,

We undertake that we will comply with the aforesaid as may be applicable to us from time to time and will sign all such other documents and do all such other acts, deeds and things, if any, that may be necessary on our part in this regard and to enable us to be registered as the holder(s) of the equity shares which may be allotted to us by the Company. We authorize you to place our name(s) on the Register of Members of the Company as the holder(s) of Equity Share(s) that may be so allotted to us.

We hereby enclose Board Resolution authorizing the investment as give below:-

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| REGD.<br>FOLIO NO.<br>(BLOCK 1)                                  | NO. OF<br>EQUITY<br>SHARES HELD<br>AT PRESENT<br>(BLOCK 2) | NO. OF<br>EQUITY<br>SHARE (S)<br>APPLIED<br>(BLOCK 3) | AMOUNT PAYABLE<br>@ Rs 275/- PER<br>EQUITY SHARE<br>(BLOCK 4) | AMOUNT PAID ON<br>APPLICATION<br>@ Re. 275/- PER<br>EQUITY SHARE<br>(BLOCK 5) |
|------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------|
|                                                                  |                                                            |                                                       |                                                               |                                                                               |
| Amount paid<br>(Currency and also<br>equivalent Rs. in<br>Words) |                                                            |                                                       |                                                               |                                                                               |
| Drawn on<br>(Name of Bank and<br>Branch)                         |                                                            |                                                       |                                                               |                                                                               |
| By Cheque / Draft / T.T.<br>Wire transfer /                      |                                                            | No.                                                   | Dated                                                         |                                                                               |
| Payable at/transferred<br>to<br>(Name of Bank and<br>Branch)     |                                                            |                                                       |                                                               |                                                                               |

\_\_\_\_\_  
**SIGNATURE (with Company stamp/seal)**

|  |
|--|
|  |
|--|

**Specimen signature of applicant**

**7. REJECTON FROM EXISTING SHARE HOLDER:**

Date: (\_\_\_\_) (14<sup>th</sup> May onwards)

The Board of Directors,  
Name of Company,  
Register office address of company

**Subject: Non-acceptance of offer of Right Issue made to the Company**

Dear Sirs,  
I received a letter of offer regarding issue of equity shares on right issue basis in proportion to one equity share for each equity share held by the me. I does not intend to accept this offer.

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This is for your record and reference.

Signatur

Name of Shareholder

Address of Shareholder

## **8. ACCEPTANCE FOR SHARHOLDER:**

**Name of Shareholder**  
**Address of Share holder**

Acceptance of offer letter

### **WHEREAS:**

- (A) I am holder of -----equity shares of Rs-----/- each in  
Name of Company.
- (B) I received a letter of offer from Name of Company regarding issue of equity  
shares on right issue basis in proportion to one equity share for each equity  
share held by the Company
- (C) I intends to subscribe to ----- No. of Equity Shares new equity shares of of  
Rs.=----- each at a premium of Rs. ----- per share in the share capital  
of Name of Company by the me amounting to INR -----.
- (D) I intended to provide a capital injection of INR ----- in Name of Company  
after receiving the capital injection of ----- from its other share  
holders.

Dated this    day of

Signatur

Name of Shareholder

Address of Shareholder

## **9. RESOLUTION FOR ALLOTMENT OF SHARES:**

**CERTIFIED COPY OF THE RESOLUTION PASSED IN THE BOARD MEETING OF NAME OF COMPANY HELD ON -----DAY OF -----MONTH -----YEAR, AT REGISTERED OFFICE AT ADDRESS OF REGISTERED OFFICE.**

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**“RESOLVED THAT** in terms of authority given to the Board by the Articles of Association of the Company, NAME OF SHAREHOLDER be and is hereby allotted and issued -----  
- (No. of Equity Shares) equity shares **each** having a nominal value of Rs-----/-(-----  
Only) at a price of Rs. -----/- (Rupees ----- Only) per share, -in lieu  
of subscription monies of Rs. -----/- ----- received from it as per the details  
given below:

| Name of<br>Subscriber | No. of<br>shares | Dist. Nos. |    | Nominal<br>Value | Certificate<br>No. | Folio<br>No |
|-----------------------|------------------|------------|----|------------------|--------------------|-------------|
|                       |                  | From       | To |                  |                    |             |
|                       |                  |            |    | Rs.              |                    |             |
| .                     |                  |            |    |                  |                    |             |

**RESOLVED FURTHER THAT** the above equity shares so issued and allotted Name of shareholder shall be subject to the provisions of the Memorandum and Articles of Association of the Company.

**RESOLVED FURTHER THAT,** a letter of allotment in relation to the above equity shares issued and allotted as aforesaid be issued to name of shareholder by the Company.

**RESOLVED FURTHER THAT** name of directors of company or any other Director of the Company be and is hereby authorized to do all such acts, deeds and things as may be required to be done to give effect to the above resolution, including issuance of duly stamped share certificates in relation to the above equity shares issued and allotted as aforesaid to name of shareholder in accordance with the provisions of the Companies Act, 2013 and rules made there under and the Articles of Association of the Company and do all other acts consequent to the issuance and allotment, including, in particular the payment of the requisite stamp duty, for issuing duly stamped share certificates evidencing the allotment of equity shares and give such directions as may be required, necessary, expedient or desirable for giving effect to the aforesaid resolutions.”

**CERTIFIED TRUE COPY**  
For **NAME OF COMPANY**

\_\_\_\_\_  
**NAME OF DIRECTOR**

(Director)

DIN:

ADDRESS OF DIRECTOR

**10. RESOLUTION FOR SIGNATURE OF SHARE CERTIFICATE**

**RESOLVED FURTHER THAT** the share certificates be issued under the Common Seal of the Company, under the signature of name of directors of company, Directors of the Company, and ----- as authorized signatory.

(Author - CS Divesh Goyal, ACS is a Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written

**CONTACT ON BELOW MENTIONS EMAIL ID FOR ANY QUERY OR QUESTION OR SUGGESTIONS:**

Regards,  
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