Private Placement

"**Private Placement**" means any offer of securities or invitation to subscribe securities to a **select group of persons by a company**

The offer of securities or invitation to subscribe securities, **shall be made** to such number of persons not exceeding **200** (excluding qualified institutional buyers and employees of the company)

Section 42 of the Companies Act, 2013 allows any company, whether private or public, to make private placement of securities through issue of a "Private Placement Offer Letter"(PPOL). We have discussed provision of the section earlier here.

In additional of Section 42, Rule 14 of the Companies (Prospectus and Allotment of Securities)Rules 2014 prescribes all fine prints of the private placement.

A Company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4

A Private Placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within 30 days if recording the names of such persons in accordance with sub-section(7) of section 42.

No person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not confirming to this condition shall be treated as invalid.

A Company shall not make a private placement of its securities unless-

1. The Proposed offer of securities or invitation to subscribe has been previously approved by the shareholders of the company, by a Special Resolution, for Each of the offers or invitation. In the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed.

In case of offer or invitation for **non- Convertible debentures**, it shall be sufficient if the company passes a previous **special resolution** only once in a year for all the offers or invitation for such debentures during the year.

2. Such offer or invitation shall be made to not more than 200 persons in the aggregate in a financial year.

Any offer Or invitation made to QIB or to employees of the company under a scheme of employees stock option as per provision of clause(b) of sub section (1) of section 62 shall not be considered while calculating the limit of 200 persons.

The requirement of provision of sub-section (3) of Sec 42 shall apply in respect of offer or invitation of each kind of security and no offer of invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed.

The company shall maintain a complete record of private placement offer in form PAS-5.

A copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies(Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of 30 days of circulation of the private placement offer letter.

A Return of allotment of securities under section 42 shall be filed with the Registrar within 30 days of allotment in Form PAS-3 along with a complete list of all security holders.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer`

All monies payable towards subscription of securities under this section **shall be paid** through cheque or demand draft or other banking channels **but not by cash**. On the time of allotment, Return of allotment shall be file with ROC.

A company making an offer or invitation under this section shall allot its securities within **60 days** from the date of receipt of the application money for such securities and 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% per annum** from the expiry of the 60th day:

Provided that 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

If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a **penalty** which may extend to **the amount** involved in the offer or invitation or **two crore rupees**, whichever is higher, and the company shall also refund all monies to subscribers within a period of 30 days of the order imposing the penalty.

PROCECURE 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

3. Call EGM:

- 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 SR

4. File MGT-14 with ROC

Attachments:

-Notice of EGM
-CTC of Special Resolution
-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 to the persons to whom right was given.

9. Called BM 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.

Perferential Allotment

1. **To person** who are holders of equity shares of the company on the date of offer in proportion. The offer shall be made by notice specifying the number of share offered. Limiting a time **not being less than 15 days and not exceeding 30 days** from the date of the offer. If not accepted, shall be deemed to have been declined. Unless the AOA of the company otherwise provide the offer aforesaid shall be deemed to include a **RIGHT** Exercisable by the person

2. **To Employees** under a scheme of ESOS, subject to special resolution passed by the company

The Notice shall be dispatched through Registered Post or Speed Post or Electronic mode to all the existing shareholders **at least 3 days before the opening of the issue.**