CS JYOTI GOHIL - COMPANY SECRETARY
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Private Placement

Lack of funds is very crucial reason to affect the health of business in India. To cope of with Dynamic Business Rush for expansion of existing one or setting up new venture / projects by small or Private limited company need sufficient money or working capital.

Applicable Section: Section 42 of Companies Act, 2013

Applicable Rule: Rule No: 14 of Companies (prospectus and Allotment of securities) Rules, 2014

As per companies Act 2013, a private limited company can raise funds via three ways: -

Further Issue Capital

- Right Issue
- ESOP
- Private Placement /Preferential Allotment

Private placement is cost effective way of raising capital without going to public

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A public Limited Company and Private Limited Company can issue shares through Private Placement

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Any offer or invitation

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To subscribe or issue of securities
Each kind of security that is 'Equity Shares, Preference Shares or Debentures'.

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Only to a select group of persons who have been identified by the Board (exclude QIB and ESOP)
Private Placement shall not made to persons more than 200 aggregate in a financial year

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Through private placement offer-cum-application, which satisfies the conditions specified in this section

Important Notes

Short summary of some important points to be noted: -

1.	Private placement shall be approved by shareholders of the company, by a Special resolution.
2.	Whether articles of association authorize for issue of shares through private placement and if not, then first alter the articles of association to include provisions for issue of shares through private placement.
3.	Valuation Report is mandatory by registered valuer as per section 247 of Companies Act,2013 also value/price need to justified for this purpose. (Practicing CA/CS/CMA or SEBI registered Merchant Banker).
4.	The Private Placement offer shall not carry any renunciation right.
5.	Mode of payment in respect of subscription of securities only other than cash.(Cheque/DD/Banking Channel)
6.	No need to publish advertisement for private placement to inform the public at large about such an issue.
7.	The application Money received through private placement shall be kept in separate Bank Account
8.	No fresh offer shall be made unless current offer/allotment has been completed.
9.	Issuance of only fully paid up shares through Private Placement.
10.	If Capital is sufficient for issue of shares and if not then increase authorized capital also alternation of capital clause in MOA.(follow procedure for the same first)
11.	Private Limited companies are exempted to file resolutions in Form MGT – 14 as per exemption notification dated 05th June,2015
12.	**The Company can use the subscription money only after filling of Return of Allotment with the registrar.**
13.	Relevant date means 30 days from the date of General Meeting of the company is scheduled.
14.	Issue of share certificate as per Section 56 within 2 months from the date of allotment.
15.	If allotment not made within 60 days as prescribed date in offer letter (PAS – 4) then company has to refund / repay the same within 15 days from date od completion of 60 days of allotment also liable to pay 12 % p.a. interest.
16.	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 thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:
17.	Part – B (to be filled by an applicant) of PAS -4 required to filled before filling Form PAS – 3.

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Procedure for Private Placement:

Call Board Meeting – Agenda – To get approval from Board of Directors for private placement.

Identify required person as allottee and Prepare list for the same.

Convene Board meeting and pass necessary resolution: -

- Issue of shares through private placement
- Appointment of Registered valuer
- Fix date, day and venue for general meeting to approve issuance of shares through private placement by special resolution with offer letter.
- To authorize any of Director / Company secretary to sign the documents.

Obtain valuation report from registered valuer appointed by the company

Convene General Meeting and pass Special resolution with explanatory statement for Private placement. Company

Prepare Private Placement offer letter cum – application form

Convene Board meeting and pass necessary resolution: -

- Approval of draft offer letter for Private Placement
- Open separate bank account in scheduled bank to kept application money

The company shall maintain a complete record of private Placement in Form PAS- 5.

Provide Offer letter to proposed allottees with application form

Convene Board Meeting within 60 days of receipt of application money, Pass necessary resolution

- Allotment of shares through private placement
- Authorize to issue share certificate
- Authorize to make entry in register of member.(update register of member)

Due dates of form filling:

Name of form	Particulars	Due date
MGT – 14	Special Resolution – to issue shares	Within 30 days of general meeting (EOGM)
	Issuance of Offer Letter	Within 30 days of general meeting (EOGM)
	Circulation of offer (PAS -4)	Only after filling of MGT -14 for issue of offer
PAS – 4	Offer letter file in **Form GNL -2**	Within 30 days of Circulation of offer
PAS - 5	Complete Record of Private placement file in **Form GNL – 2**	Within 30 days of Circulation of offer
	Allotment of shares	Within 60 days of receipt of money
PAS – 3	Return of Allotment - (List of allottee and BR for allotment of shares	Within 15 days of allotment
SH -1	Issue of Share certificate	Within 2 months from date of allotment of shares
	Refund of Application Money	Within 15 days from completion of 60 days of allotment

Penalty for Non – Compliance

If a company fails to comply the provision of private placement then the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or Rs. 2 Crore, whichever is lower.

Format Form PAS – 5 : last page

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Form PAS-5

(Section 42(7) and Rule 14(4) of Companies (Prospectus and Allotment of Securities) Rules, 2014)

Record of a private placement/preferential basis offer to be kept by the company

Name of the Company	:

Registered office of the Company :

CIN :

DETAILS OF PRIVATE PLACEMENT OFFER:

Date when approval of the shareholders obtained for the current Private Placements

Offer Letter:

Amount of the offer:
Date of circulation of offer letter:

Following details of the persons to whom offer letter has been circulated:

Sl. No.	Name	Complete Address	Phone number	Email ID	Initial of the Officer of the company designated to keep the Record
1.					

Date: **For, ABC Limited**

Place: ____________

Director

DIN: