



## PRIVATE PLACEMENT OF SHARES- Key Changes – Companies Amendment Act, 2017

This is article no. **304 Dated 04.01.2018** of the series of editorials written by the author on corporate laws (Including Companies Act, 2013, SEBI, RBI Regulations, **IBC**, LLP Act, 2008 etc.).

### **INTRODUCTION:**

A business cannot run without funds. In case of an incorporated company, initial capital always comes from subscribers to the memorandum. After that company can raise funds by Loans/borrowings or issue of further securities.

To issue further shares there are following ways: (i) Right Issue of Shares (ii) Private Placement of Shares (iii) Preferential Allotment of Shares. In this editorial author shall talk about the provisions of **Private Placement of Shares** after Amendment in Companies Act, 2013.

**MEANING:** "private placement" means any offer or invitation to subscribe or issue of securities to a<sup>1</sup>select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section 42 read with rules.

### **CONDITIONS FOR PRIVATE PLACEMENT OF ISSUE OF SHARES**

#### 1. **Maximum No. of persons to whom offer can be made:**

- An **offer** can't be made under a Private Placement Offer Letter to more than 200 people in a financial year.
- The 200 people limit excludes Qualified Institutional Buyers and Employees and the limit of 200 people is calculated individually for each kind of security.
- Offer shall be made only to selected group of person identified by the Board of Directors.

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<sup>1</sup> Selected Group of Person indicate while offering the shares Company shall decide the name of person to whom share shall be issue.

**2. [Condition for Private Placement Offer Letter:](#)**

Company shall made offer in prescribed form to identified persons. Name and address of the persons shall be record by the Company in prescribed manner.

**3. [Right of Renunciation:](#)**

The Private Placement offer shall not carry any renunciation right. Only the person in whose name offer letter issued can apply for the subscription.

**4. [Modes for Payment of Subscription Money:](#)**

Subscription money shall be paid either by cheque or demand draft or other banking channel or not by cash. Shares under Private Placement can't be subscribed by payment in cash.

**5. [Use of Allotment Money:](#)**

A company shall not utilize monies raised through private placement unless allotment is made and the return of allotment (i.e. e-form PAS-3) is filed with the Registrar in accordance with sub-section (8).

*This is major change by Amendment Act, 2017. After amendment without filing of e-form PAS-3 for allotment of Shares Company can't use the funds received from subscription.*

**6. [No further offer till completion of earlier offer:](#)** No offer or invitation of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security in completed.**7. [Separate Bank Account:](#)**

The money so received shall be kept in a separate bank account of the company and utilized only for allotment (or repayment).

**8. [Persons to whom offer will make:](#)**

All offers shall be made only to those persons whose names are recorded by the company prior to the invitation to subscribe. Allotments can be made only to such persons addressed specifically to the persons whom the offer is made along with the Offer letter.

9. **No advertisement of offer:**

No company offering securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer.

10. **Days in which share should be issued:**

Allotment has to be carried out within 60 days of receiving of money.

11. **If not allotted within 60 days:**

If allotment is not made within 60 days then till 75th day the monies have to be repaid. Failure to repay has a liability of interest at 12% pa.

12. **Minimum gap between two offers.**

There is no condition in the Act or rule regarding minimum gap between two offers. A company can come with new offer after completion of earlier offer.

13. **Maximum no. of offers in a Financial year:**

There is no condition in the Act or rule regarding maximum Number of Private Placement offers in a financial year. According to this company can come with private placement offer in a financial year any no. of times. But remember an offer can't be made more than 200 peoples in a financial year.

In the Section 42 of Companies Amendment Act, 2017 more than 6 places mentioned that “as may be prescribed”. Therefore, Central Government may amend the rules in respect of Private Placement of Shares.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES 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

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