

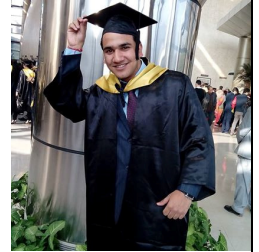


RIGHT ISSUE OF SHARES UNDER COMPANIES ACT- 2013

SERIES NO

75

GOYAL DIVESH & ASSOCIATES,
Practicing Company Secretary



"Everything is easy, if you are crazy about it And
Nothing is easy, when you are lazy about it."

CONTENT OF ARTICLES

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- B. Complete process of Right Issue of Shares
- C. Process of Renunciation of Shares
- D. Issue of Shares under Cash Consideration
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BACKGROUND:

As per Section 62(1) of the Companies act, 2013 if the Company decides to issue fresh shares, these should be offered to existing shareholders in proportion to existing persons who are holders of equity shares.

‘Right Issue’ means offering shares to existing members in proportion to their existing share holding. The object is, of course, to ensure equitable distribution of Shares and the proportion of voting rights is not affected by issue of Fresh shares.

Only one pre-emptive right is to be given: It is now well settled that only one pre-emptive offer is to be made which is otherwise (should be ‘either’) to be acceptable or not at all. The existing shareholders are not to be given further pre-emptive rights in respect of those unaccepted shares. Even such first right can be waived or modified.

A private Company was not required to make right offer under the Companies Act, 1956. Even though earlier there was not provision, it was held that the issue must be *bona fide* and can't be made with oblique motives.



STEP PROCEDURE OF RIGHT ISSUE OF SHARES

STEP-I

- Company will decide the cutoff date.
- Company will Prepare Draft Offer of Letter.

STEP-II

Call Meeting of Board Director:

- ✓ Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- ✓ Attach Agenda of Board Meeting along with Notice.
- ✓ Attach Notes of Agenda along with Agenda.

STEP-III

Hold the Board Meeting:

- ✓ Check the quorum of Board Meeting.
- ✓ Identify the Shareholders to whom you will issue shares.
- ✓ Pass Board Resolution for approval of offer letter.
- ✓ Authorize a director of company to issue Letter of Offer.
- ✓ Letter of offer shall be dispatched through registered post or speed post or through electronic mode to all the existing share holders.

STEP-IV

- Offer will be open at least after 3 days of issue of letter of offer.
- Offer will be open for minimum 15 days or maximum for 30 days.

STEP-V

File Form with Registrar:

- ✓ File MGT-14 with Registrar within 30 days of passing of Board Resolution.

Attachments:

- ✓ CTC of Board Resolution for issue of letter of offer.

STEP-VI

- Receive the Money from the Shareholders.



STEP-VII

Call Board Meeting after receiving of Share application money.

- ✓ Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting. [Section-173(3)]
- ✓ Attach Agenda of Board Meeting along with Notice.
- ✓ Attach Notes of Agenda along with Agenda.

STEP-VIII

Hold the Board Meeting:

- ✓ Check the quorum of Board Meeting.
- ✓ Present List of Allottees before the Meeting.
- ✓ Pass Board Resolution for allotment of shares (within 60 days of receiving of money).

STEP-IX

File form with ROC:

- ✓ File PAS-3 with Registrar of Company.

ATTACHMENTS:

- List of Allottees.
- Board Resolution for allotment of Shares.

STEP-XI

Issue Share Certificate:

- ✓ Pass Resolution for issue of Share Certificate in Board Meeting.
- ✓ Authorize to two directors and a authorize person to sign share certificate.
- ✓ Issue Share Certificate in Form- SH-1 (As per Section-56 with in 2 (two) months from the date of allotment of shares.

PROCESS OF RENUNCIATION OF SHARES

A. PROCESS OF RENUNCIATION OF SHARES BY THE SHAREHOLDER:

We can call this process as “Issue of share to outsiders under Right issue of Shares”.

PROCESS ON PART OF SHAREHOLDER:

- Company will give offer to existing shareholders under Right Issue of Shares.



- If a shareholder is not interested in accepting the offer of additional shares, he can renounce the same in favour of any other person, who may not be member of the Company. {This is the way by which Company can issue shares to outsiders under Right issue of shares}.
- **Giving of such right of renunciation is mandatory:** unless the Article of the company provide otherwise. The right must be specified in Letter of offer given to the Shareholder.
- **Renounce by Shareholder:** Normally 'Right Issue' is at a price lower than the prevalent market price A shareholder who may be short of funds can renounce his right to specified number of shares, by 'Selling' his right to subscriber.
- **Exercise Both Rights:** He can subscribe to part of his rights and renounce the balance. This is permissible

PROCESS ON PART OF COMPANY:

- i. Company will give offer of "Renunciation" to existing shareholders in the Letter of Offer.
- ii. If Shareholder wants to renunciation of Shares then shareholder will give a letter of renunciation in favour of renounce to Company.
- iii. Company will receive an acceptance letter and share application money from the renounce.
- iv. After closing of offer period company will hold a Board Meeting and allot shares to renounce.

B. PROCESS OF RENUNCIATION OF SHARES BY THE BOARD:

PROCESS ON PART OF COMPANY:

- i. Company will give offer of "Renunciation" to existing shareholders in the Letter of Offer.
- ii. If Shareholder don't subscribe to the 'right issue'. They may not even renounce their right to a third person.
- iii. In such cases, the Board of Directors can dispose of the un-subscribed shares in a manner which they think is most beneficial to the company.
- iv. Board of Directors can allot the UN-subscribe portion of shares to any other person.



- v. **Good Practice:** Normally practice followed by good companies is to ask the Shareholders to apply for additional shares, over and above the shares allocable to them as a matter of right.
- vi. The un-subscribed portion is allotted to the members who have applied for additional shares on an equitable basis and balance amount is refunded.

ISSUE OF SHARES UNDER CASH CONSIDERATION

Que: Whether a Company can issue shares on Cash Consideration?

Ans: YES, As per Companies Act, 2013

Right Issue of Shares: For right issue of shares Section- 62 of Companies Act, 2013 will apply.

According to my understanding: Companies Act, 2013 doesn't restrict to issue shares on cash. No method is provided in Companies Act, 2013 u/s 62 for issue of shares. Like mentioned in Private Placement of Shares Section- 42.

In Section- 42 of Private Placement of Shares its mentioned that company will receive money from the subscriber in the Bank account of Company. That's mean subscriber have to make payment through Banking channel not by cash. But such restriction is not given under Section – 62 for right issue of shares.

CONVERSION OF LOAN INTO EQUITY

Question: Can a company convert loans into share capital of company under companies act 2013 (except loan taken and debenture issued to government company).

Solution: Section 62 sub section 3 of Companies Act, 2013

As per The Section:

- I. Provisions of Section- 62 doesn't required to follow in this situation
- II. Special Resolution required filing at the time of issue of Debenture and Loan.



Observation:

- I. If a company issue Debenture or take loan with the condition to convert such loan and debenture into Shares in future then company has to pass a **Special Resolution** at the time of accepting of Loan and issue of Debentures. {Proviso of subsection 3 of Section 62}
- II. Required to file form MGT-14 for submission of Special Resolution with ROC.
- III. Terms should be attached to the Debenture and Loan for conversion into Capital in future.
- IV. No need to follow the process given u/s 62 for issue of shares. (subsection 3 of Section 62) [No need to issue Offer Letter in this situation]

Note:

- A. If a Company have raised loan earlier in old Companies Act, 1956 and want to convert such loan into Capital of Company, can he do so?

Solu: **YES**, he can do so. Because under Companies Act, 1956 there was no such requirements exists. But an agreement mentioned the Condition for conversion of Loan into equity in future.

- B. If a Company have raised loan earlier in Companies Act, 2013 and want to convert such loan into Capital of Company, can he do so?

Solu: **YES**, he can do so. if at the time of raising of money he had passed Special Resolution and if company had passed special resolution at the time of receipt of money then he can convert such loan into capital of company.

Following things are required:

- a) Special Resolution at the time of raising of Loan
- b) Filed MGT-14 with ROC for Special Resolution.
- c) Pass a Board Resolution at the time of conversion of same into Share Capital.
- d) File form MGT-14 for issue of shares
- e) File form PAS-3 for allotment of shares.



IMPORTANT MATTERS RELATING TO RIGHT ISSUE OF SHARES:

❖ Prospectus not required in right offer even with right of renunciation:

- Section 23(2) of the Companies Act, 2013 clearly states that issue of prospectus is not necessary in right issue whether with or without right of renouncement.
- Department has also clarified vide letter No. 8/81/56-PR dated 04.11.157 that issue of rights share is a 'domestic concern' and hence issue or registration of prospectus is not necessary.
- Section 62(1)(a) of the Companies Act, 2013 states that company making right issue should send a letter of offer.
- No prospectus is required for 'right issue' to existing members, even if the members have right to renounce the right to a third person, who may or may not be a member.

❖ Fraction right in case of Right Issue of Shares:

- Sometimes, right issue may result in fractional right.
- The offer of further shares should be offered to holders of equity shares in proportion to the existing paid up capital, as nearly as *circumstances admit*. Thus, legally, such fractional right can be ignored. However, this becomes unfair, particularly to small shareholder.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES 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