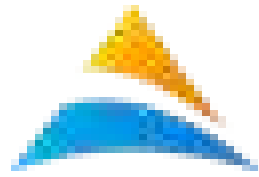


**Issue of Securities**  
**Rights Issue, Preferential Allotment & Private Placement**  
**under the Companies Act 2013**

**Amita Desai & Co.,**  
**Company Secretaries, Mumbai**  
**12 August 2023**



**AMITA DESAI & CO.**  
Company Secretaries

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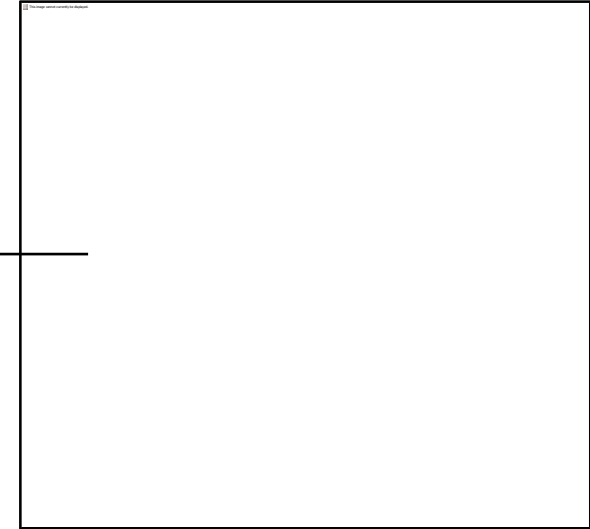
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## Overview

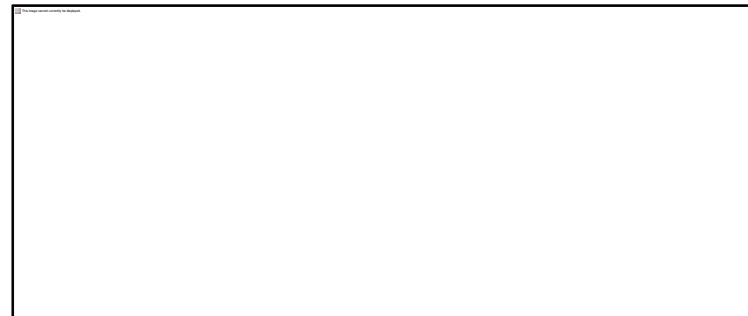
<b>Sr. No</b>	<b>Particulars</b>
1	Definitions
2	Types of Securities
3	Modes of Raising Capital under the Companies Act 2013
4	Right Issue ( Equity/ Preference )
5	Right Issue (Letter of Offer – Content, Despatch & Timeline)
6	ESOP (Definition/ Eligibility/ Legal Provisions )
7	Preferential Issue
8	Private Placement
9	Practical Tips
10	Recent Adjudication Orders



# Business Needs Money



**Securities**



## Definition of Securities 1/5

### **Securities**

"securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

## Definition of Securities 2/5

**Securities** include

1. Shares, scrips stocks, bonds, debentures, debenture stock, or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate,
2. Derivative,
3. Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
4. Security receipt as defined in clause (zg) of section 2 of (the SARFAESI Act 2002),
5. Units or any other such instrument issued to the investors under any mutual fund scheme;
6. Units or any other instrument issued by any pooled investment vehicle;
7. Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging the beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be; (ii) Government securities; and (iii) rights or interests in securities;

Explanation.--Securities **shall not include** any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit-risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938



## Few Definitions 3/5

### **Debenture**

“Debenture” includes debenture stock, bonds, or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

*Provided that—(a) the instruments referred to in Chapter III-D of the RBI Act, 1934; and (b) such other instrument, as may be prescribed by the Central Government in consultation with RBI issued by a company, shall not be treated as Debenture;*

### **Deposits**

“Deposit” includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with RBI;

## Few Definitions 4/5

### **Derivative**

“Derivative” means the derivative as defined in Section 2 (ac) of the Securities Contracts (Regulation) Act, 1956

### **Employees’ Stock Option**

Employees Stock Option means the Option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

### Private Placement

Private Placement means any offer or invitation to subscribe or issue of securities to a 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 section 42 of the Companies Act, 2013

### Preferential Offer

Preferential Offer means an issue of shares or other securities (equity shares, fully convertible debentures, partly convertible debentures, or any other securities, which would be convertible into or exchanged with equity shares at a later date) by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

## Types of Securities / Instruments

- Shares- Equity shares (with or without Differential Rights) & Preference.
- Warrants
- Debentures- Convertible (Fully / Partially/ Optionally)
- Debentures- Non- Convertible
- Loans

# Issue of Shares and Securities

## **For Private Limited / Unlisted company**

Section 23- Public Offer or Private Placement

Section 42-Offer or invitation for subscription of securities on private placement.

Section 43- Kinds of Share Capital

Section 47- Voting Rights

Section 55- Issue and Redemption of Preference Shares

Section 62-Further Issue of Share Capital

Section 71- Debentures

Section 73- Deposits

Shares - Equity– Sections 23, 42,43, 47, 62

Preference– Sections 23, 42, 62, 55

Debenture- CCD- Section 23, 42, 62, 71

NCD- Section 23, 42, 71

OCD- Section 23, 42, 62, 71,73

PCD- Section 23, 42, 62, 71, 73

## Modes of Raising of Capital

Public  
Issue

Right Issue

Preferential  
Issue

Private  
Placement

Sweat  
Equity

Bonus  
Issue

*IPO– Thru SEBI Regulations and Sections 24 to 41- **We are not discussing the same today***



# Legal framework

Further issue of  
Shares

Private  
Placement

Section 62 & 55 ( Pref Shares)  
+  
Rule 9, 12 & 13 of  
the Companies (Share Capital and  
Debentures) Rules, 2014

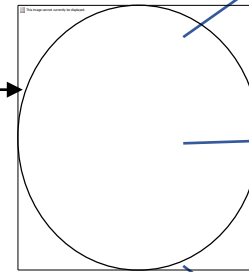
Section 42, 62 , 55 & 71  
+  
Rule 14 of  
the Companies (Prospectus and Allotment  
of Securities) Rules, 2014



## Further issue of shares- Section 62 of the Companies Act, 2013



Further Issue of Shares



Existing Shareholder

Employees

Select Group of Persons

# Legal Framework

Right issue

- When shares are issued to Existing Shareholders
- Section 62(1)(a) read with the Rules

ESOP

- When shares are issued to Employees
- Section 62(1)(b) read with the Rules

Private Placement &  
Pref Issue

- When shares are issued to a Select Group of Persons including Members or Employees
- Section 42 and 62(1)(c) read with the Rules

## Section 39 (4)& (5) – Return of Allotment of securities

**PENALTY!**

When a company makes allotment of securities, it shall file return with RoC in PAS-3,  
and If it defaults in filing such return

Company and Officer- in- default

Liable to penalty for each default

Rs.1000 per day till the default continues  
or Rs. 1 lakh, whichever is less

## Few Points to be noted for any Offer of Shares or Securities

- There could be a dilution of shareholdings due to Right Issue if the shareholders do not subscribe
- If the Company has availed any Credit facilities, check the terms of such facilities for obtaining prior approval of the Lender, for any change in the shareholding pattern
- Articles to be reviewed if there is a Right of First Refusal (ROFR) to Promoters in a private limited company or General Meeting is mandated for any further issue or approval of Nominee Directors is required etc.
- Right Issue of shares can be offered for partly paid or fully paid shares
- Cut-off date BENPOS is required to ascertain the proportion of offer to each shareholder
- If the funds are received from NRE Account, obtain a certificate from the Banker
- If any NRI is subscribing shares from NRO account, there is no need to comply with FEMA 1999
- Please note that shares/securities before issuance is not "Goods" as defined under Sale of Goods Act, 1930

# Rights Issue



## Legal Provisions for the Right issue 1/7

*Section 62(1)(a) & 62(2) read with Rule 12A of the Companies (Share Capital and Debentures) Rules, 2014*

1. Offer to the existing Equity Shareholders of the Company.
2. Offer to be in proportion to their existing shareholding.
3. The Company to send a letter of offer (LOO) = minimum 3 days before the opening of issue.
4. Offer to be open for Min 15 days and Max 30 days  
(For private companies if consent is given by 90% of members, this period can be shortened. However, the offer to be kept open for a minimum of 7 days from the date of the Offer ( Refer to Rule 12A))
5. If the Offer is not accepted within the time prescribed, it shall be deemed declined.
6. Right to renounce the shares deemed available unless AoA provides otherwise and a statement with respect to renunciation shall be specified in the Offer.
7. The Board has the right to dispose off the unsubscribed portion of the Offer which is not dis-advantageous to the shareholders and the Company.

### Step Plan for Right Issue

1. Check AoA (a) to ensure that Authorised Share Capital is sufficient for the issue of securities (b) If it provides for the renunciation of the shares
2. Valuation Report is not required if the securities are offered equally to all existing shareholders ( Resident or Non-Resident). *However, it shall be required if IND AS is applicable to the Company.*
3. Hold the 1<sup>st</sup> Board Meeting to approve (a) the Offer of shares on a Right Basis (b) Approve authority to any Director
4. Dispatch of Offer with Notice to all existing shareholders at least 3 days before the opening of the issue.  
*(Registered Post/Speed Post/ Electronic mode/Courier or any other mode)-*  
*CAA 2017 allowed Courier or any other mode having proof of delivery*
5. File e-Form MGT 14 with ROC within 30 days of passing of the Board Resolution u/s 179(3)  
*[Private company is exempt from filing MGT 14 for resolution u/s 179(3)]*
6. Receive subscription amount from the subscribers in the normal bank account of the Company

## Step Plan for Right Issue

7. Hold the 2<sup>nd</sup> Board meeting and approve the Allotment of shares with authority to issue the shares ( Physical or Demat)
8. If the shares are not issued in 60 days, then from the 75<sup>th</sup> day of receipt of money it will be treated as Public Deposit
9. File e-Form PAS 3 ( Return of Allotment) with ROC within 30 days of the Allotment.
10. Issue the share certificate within 2 months from the date of allotment
11. If shares are issued in Demat Form, file Corporate Action Form with the Depositories
12. Make necessary entries in the Register of Members
13. If the shares are issued on a Repatriable Basis to Non-Resident – comply with FEMA 1999 provisions
14. For NBFC/HFC separate rules have to be complied with as applicable.



## Issue of Preference Shares as Right Issue 4/7

The Company can offer Preference Shares to equity shareholders on a Right Basis

- The Company needs to comply with the provisions of Section 55 and Rule 9 & 10 of the Companies ( Share Capital & Debentures)Rule, 2014 if it is offering Preference Shares
- The Preference shares *cannot be irredeemable* & be redeemable in max 20 years except for infrastructure project
- The Articles of Association of the Company to have such provision for the issue of preference shares
- The Company to pass a special resolution in the general meeting of the company
- The Company should not be in default in the redemption or payment of dividends to the preference shares issued

## Penalty 5/7

**PENALTY!**

If the Company defaults in the compliance of provisions of Section 62 ( Right Issue/ ESOP/ Preferential Allotment)

Company or Officer of a Company  
or any other person contravenes

Liable to penalty u/s 450 as no specific penalty mentioned u/s 62  
Rs.10,000/- fixed penalty and Rs.1000/- per day till the default continues  
Upper Cap– Rs.2 Lakh to Company and Rs.50,000/- for Officer or other person

## Lesser Penalties for certain types of company 6/7

### Class of Companies

- OPC / Small Company/ Start-up company/ Producer Company,
- Any of its Officer-in-Default or any other person in respect of such company,

Penalty – ½ of the penalty specified in respective provisions of the Act

### Upper Cap-

Maximum Rs.2 Lakh to such company

Maximum Rs.1 lakh its Officer-in-Default or any other person in respect of such company.

## Offer letter to contain the following after 17 April 2020 7/7

### Press Note No.3 Dt 17.04.2020- Investment from Land Border-Sharing Countries

*The restriction is imposed on the entity of a country sharing land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.*

*This applies to all investments be it through Right Issue/ Preferential Issue or Private Placement*

*Mention it in SH-4, LOO and PPOL*



# Employee Stock Option 1/5

## Meaning of Eligible Employee

The employee means a permanent Employee of the Company working in India or Outside India or a Director (other than ID) of the Company and also of Holding Company/ Subsidiary Company ( in India or outside India)

The employee does not include the Employee who is the Promoter or belongs to the Promoter Group or Director holding directly or indirectly thru himself or his relatives or body corporate > 10% of equity shares of the Company

Not applicable to Startups for 10 years from incorporation

Section 62(1)(b) read with Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014

1. Special Resolution for the issue of ESOP ( For Private Limited company its is Ordinary Resolution)
2. Following details to be disclosed in the Explanatory Statement of Notice:
  - a) Total no. of Stock Options.
  - b) Identification of classes of Employees
  - c) Appraisal process for determining the eligibility of Employees for ESOP
  - d) Requirements of vesting and period of vesting
  - e) Maximum period for vesting of Option
  - f) Exercise Price or the formula for arriving at the same
  - g) Exercise Period and process
  - h) Lock-in Period, if any
  - i) Maximum Number of Options (per employee and in aggregate)
  - j) Method used for the valuation of its Options
  - k) Conditions under which Option vested in employees may lapse
  - l) Time period for exercising the vested Option in the event of the proposed termination or proposed resignation
  - m) A Statement to the effect that the Company shall comply with the applicable Accounting Standards.

## Legal requirements for ESOP 3/5

3. The Company is free to determine the Exercise Price (conformity with the accounting policies, if any)
4. The Company is free to determine the Lock-in period.
5. Separate Resolution of shareholders for (a) Grant of Option to an Employee of Holding or Subsidiary Company  
(b) Grant of Option to an Employee during a year amounting to equal to or >1% of the issued share capital of the Company)
6. If the Company wants to vary the terms of the scheme, the following requirements shall be fulfilled:

Only for ESOPs not exercised

Variation should not be prejudicial to Option holders

Special Resolution

Notice of the meeting shall disclose variation, reason, and beneficiaries

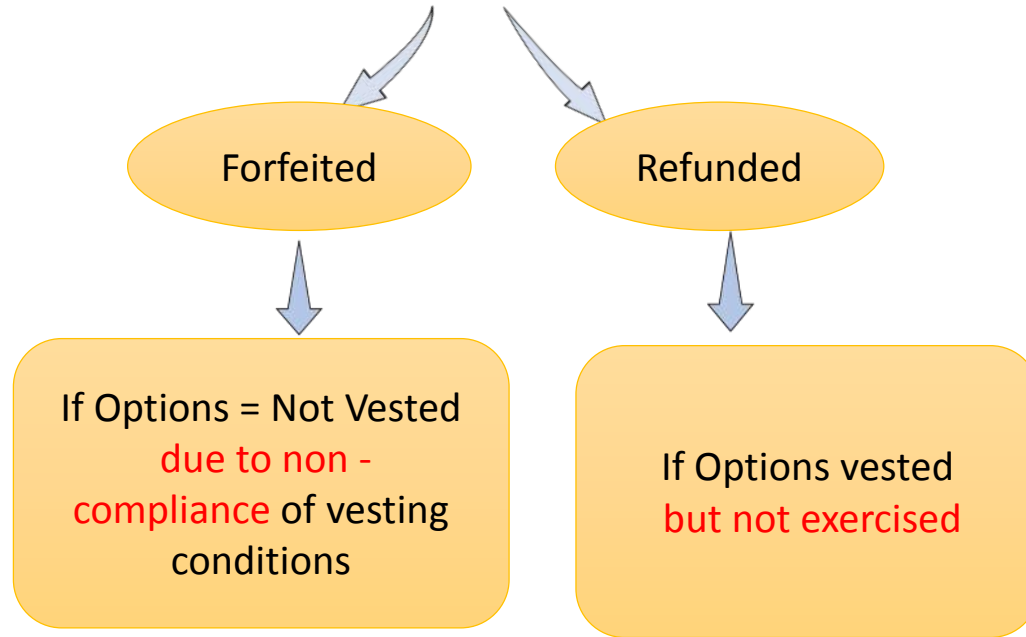


## Legal Requirements for ESOP 4/5

7. Minimum gap of one year between the grant of Option and Vesting of Option

8. The Employees shall not have the right to receive any dividend or to vote

9. Treatment of the amount paid, if any by the employee at the time of grant of Option shall be



### 10. Conditions of Employee Stock Options

- It is not Transferable
- It cannot be Pledged/Hypothecated/Mortgaged /otherwise encumbered or alienated in any other manner.
- It can be exercised only by him

### 11. Events

- a) **Death** of an employee while in employment– Grant vested to legal heirs/nominees
- b) **Permanent incapacity** while in employment – Grant shall vest in him on that day
- c) **Resignation or Termination**– Grant not vested shall expire & Grant vested can be exercised subject to terms of Policy

### 12. Company to maintain the Register of ESOP in Form SH-6

13. Adjustments can be made with respect to Sub Division/Consolidation/Bonus Issue/Right Issue/ Merger/ Sale Of Division.

### 14. Disclosure to be made in the Board's Report



## Preferential issue of shares or other securities 1/3

Issue of Shares/other securities to a select group of persons (on a preferential basis)

### Shares/other securities mean

1. Equity or Preference Shares
2. Debentures  
(Fully / Partly/ Optionally Convertible)
3. Any other security which is convertible or exchangeable with equity shares of the company at a later date



Any persons including  
**Existing Shareholders or Employee**

A preferential offer does not include shares or other securities offered through a  
**Public Issue/ Rights issue/ ESOP/ ESOS/ Sweat Equity /Bonus / Depository Receipts**

## Preferential issue of shares or other securities 2/3

Legal Provisions Section 62 (1) (c ) read with Rule 13 of the Companies ( Share Capital and Debentures ) Rule 2014

1. The Articles of Association of the Company has provisions to make Preferential Issue
2. Valuation Report of Registered Valuer to be obtained for fair value of shares
3. If the shares or other securities are issued for consideration other than cash, then the justification along with the Valuation Report of the Registered Valuer to be obtained
4. Special Resolution is required to be passed for a Preferential Offer and required disclosures as per Rule 13 to be made in the Explanatory Statement. **The validity of a Special Resolution is one year.**
5. Preferential Issue should also comply with provisions of Section 42 ( Private Placement)
6. If the Preferential Issue is made to one or more existing members then the Company is not required to send a Private Placement Offer cum Application Letter (PPOL)

## Relevant Date for Price determination of shares issued under Preferential issue 3/3

When convertible securities are offered on a preferential basis with an Option to get equity shares

Relevant Date for determination price of resultant shares

Upfront at the time of the Offer of convertible securities is made on the basis of Valuation Report of the Registered Valuer given at the stage of such Offer

OR

At the time which shall not be earlier than 30 days to the date when the holder becomes entitled to apply for equity shares on the basis of the Valuation Report of the Registered Valuer given not earlier than 60 days of the date when the holder of convertible security becomes entitled to apply for shares:

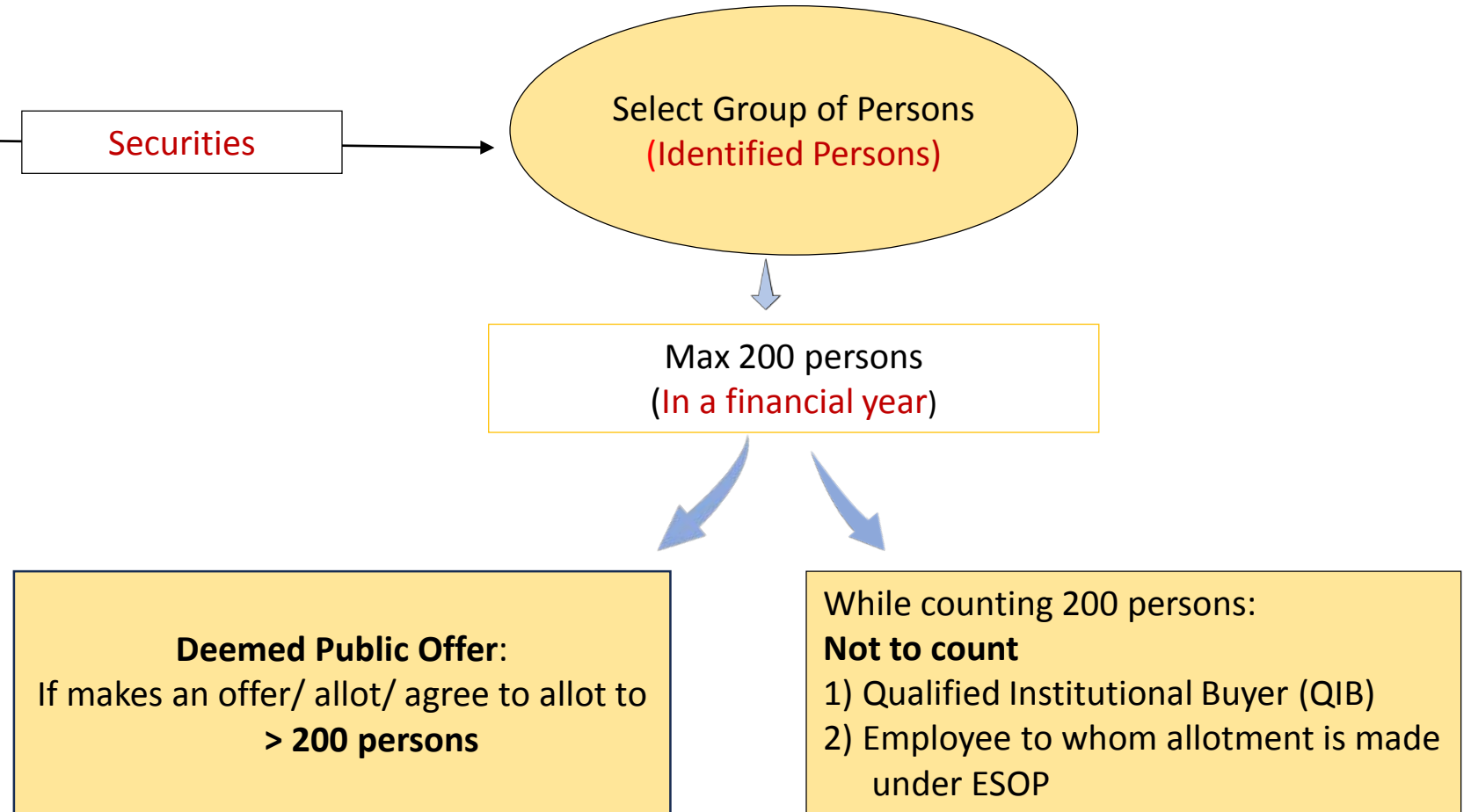
The company to take a decision at the time of offer of convertible security itself

# Private Placement



Entire section 42 is substituted vide CAA 2017 w.e.f 07 August 2018

# Private Placement 1/13





## Step Plan for Private Placement of Securities 1/13

1. Article to authorize such issue and ensure that authorized share capital is sufficient for the issue of securities.
2. Valuation Report is required from the Registered Valuer
3. Hold 1<sup>st</sup> Board Meeting for a) Approving issue of securities b) Approving PPOL c) Authorizing the opening of separate bank accounts along with other authorities.
4. File e-form for MGT 14 for the Board Resolution [*Applicable for any Issue of Securities as per Section 179 (3) (c )*]
5. Hold a General Meeting and approve through Special Resolution for each offer or invitation. The Explanatory Statement to have full details as per the Rules.
6. However, in case of offer or invitation for NCD is within the limit as per Section 180 (1) (c) only the Board Resolution would be sufficient. Further, if the Offer of NCD is exceeding the limit as per Section 180 (1) (c), it will be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations of such NCDs during the year (not FY).
7. If the offer or invitation to QIB, it will be sufficient if the company passes a previous special resolution only once in a year

8. File e-form MGT 14 for the Special Resolution
9. Open a Separate Bank account with Scheduled Bank for receipt of money
10. Private Placement Offer Cum Application (PPOL) in Form PAS 4 with Sr. no. and address to be sent to Identified Person only, after filing of Form MGT 14 with RoC for Special Resolution or the Board Resolution, as the case may be
11. PPOL to be sent in writing or in electronic mode within 30 days from recording the name of the Applicant
12. Maintain records to whom PPOL is sent in Form PAS 5 (Now there is no requirement to file it in Form GNL-2)
13. Receive the subscription amount in the specified Bank account from the person to whom PPOL has been sent (The subscription amount to be used for the purpose of Issuing the securities or Refunding to the applicant)
14. Hold 2<sup>ND</sup> BM for the Allotment with authority to any Board member or Company Secretary
15. File e-form PAS 3 for the date of allotment after that the Funds can be used and not otherwise

## Step Plan for Private Placement of Securities 4/13

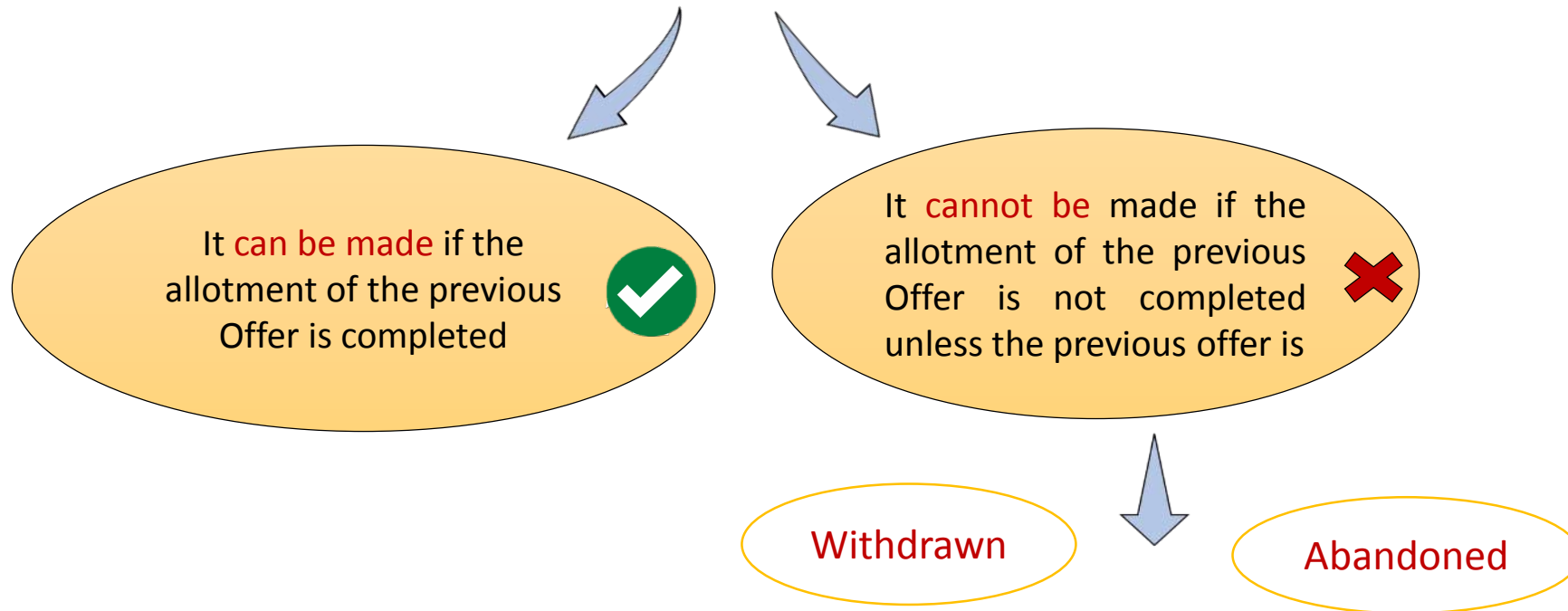
16. Make entries in the Register of Members
17. Issue the Share certificate within 2 months from the date of allotment
18. If shares are issued in DEMAT Form the file CAF with the depository
19. If the shares are issued on a Repatriable basis to Non-Resident – comply with FEMA 1999 provisions
20. For NBFC/ HFC separate rules have to be complied with as applicable.

### **Note wrt receipt of funds**

1. The subscription money is to be received only from the bank account of the person subscribing to the securities and company to keep the record of the Bank account from where the payment is received.
2. In the case of a joint holder – The subscription money to be paid from the bank account of the person whose name appears first in the Application.

## Another Private Placement Offer 5/13

If a Private Placement Offer has been made by the Company and it intends to bring another Offer

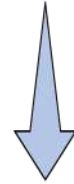


The Company may at any time make more than one issue of securities to such class of Identified Persons

## Prohibition 6/13



Company issuing securities u/s 42



To release any public advertisements  
or  
To utilize any media, marketing or distribution channels or agents  
to inform the public at large about the issue

## Allotment under Private Placement 7/13

Allotment to be made within maximum 60 days of the receipt of Application money

Repay in the next 15 days

Fails to repay by 75<sup>th</sup> day



12% interest  
p.a from  
61<sup>st</sup> day

## Allotment under Private Placement 8/13

Filing of Form PAS 3  
(Return of Allotment)  
in **15 days** from the date of  
Allotment

**The Application money  
cannot be used without  
filing of Form PAS 3**

The Return of Allotment to  
be filed  
with details of  
list of allottees  
(Name, Address, PAN and Email  
ID, etc.)

## Dual Penalty 9/13

**PENALTY!**

If the Company defaults in filing the Return of Allotment within 15 days of the Allotment

Company / Promoters/ Directors

Liable to penalty for each default  
Rs.1000 per day till the default continues  
(Max Rs. 25 lakhs)



## Dual Penalty 10/13

**PENALTY!**

If the Company *makes an offer or accepts money* in contravention of Section 42



Company / Promoters/ Directors



Liable to a penalty that may extend to *the amount raised*  
Or *Rs.2 Crores*  
*whichever is lower*



To refund *all monies*  
*with interest in 30 days*  
of the Order imposing  
the penalty

## Lesser Penalties for certain types of company 11/13

### Class of Companies

- OPC / Small Company/ Start-up company/ Producer Company,
- Any of its Officer-in-Default or any other person in respect of such company,

Penalty – ½ of the penalty specified in respective provisions of the Act

### Upper Cap-

Maximum Rs.2 Lakh to such company

Maximum Rs.1 lakh its Officer-in-Default or any other person in respect of such company.

## Issue of Debentures 12/13

### Legal Provisions – Sections 42 & 71

1. The Company may offer and Issue Debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption and the same to be approved by the shareholders by way of a Special resolution.
2. If the issue of Debenture is within the borrowing limits u/s 180(1)(c) the Company is not required to pass a Special Resolution by the member (Section 180 is not applicable to a Private Company and hence it require Special Resolution for issue of Debenture)
3. Redemption shall not exceed 10 years from the date of issue, except in a few cases
4. The Company needs to file an e-form CHG-9 with ROC within 30 days of the creation of the charge.
5. The Non-Convertible Debenture (NCD) to be secured by the creation of a charge on the assets (of the company/ subsidiary/ holding/ associate) having value not less than full payment of the Debenture and the interest thereon.
6. If the Company issues NCDs that are unsecured it requires to be Listed on the recognized stock exchange so that same does not come under the purview of Deposits

## Issue of Debentures 13/13

7. The Company to appoint a Debenture Trustee and charge to be created in favour of the Debenture Trustee
8. The Company to execute the Debenture Trust Deed ( in Form SH-12) within max 60 days from the date of allotment of Debentures
9. The Company is required to create Debenture Redemption Reserve (DRR)
10. The Company is to maintain liquid deposit or invest as the case may be, a sum which shall not be less than 15% of the amount of its debentures maturing during the year ending on 31<sup>st</sup> day of March of the next year
11. Issue Debenture Certificate within 6 (Six) months from the date of allotment of Debentures.



**Private Placement**

**VS**



**Preferential Allotment**

## Key Differences between Private Placement & Preferential Allotment

Sr No.	Private Placement	Preferential Allotment
1	<b>Any security</b> including Equity shares, Preference shares or Debentures can be issued.	<b>Only Equity Shares and other securities convertible into Equity Shares</b> can be issued
2	Can be made to any person as <b>identified by the Board</b>	Can be made to <b>existing shareholder, employees</b> or any other persons
3	Offer Letter to be in Form PAS 4	<b>No such Format</b> is prescribed
4	Subscription money to be made in <b>Bank</b>	<b>Subscription money can be in cash or for consideration other than cash</b>
5	<b>Section 42</b> to be complied with	<b>Section 42 and 62(1)(c)</b> to be complied with

## Practical Tips

1. If the allottee is a Company/ Body corporate- call for its Chartered Documents (MoA/ AoA), get SBO declaration, obtain Demat Statement and BENPOS for their previous holding to give details in the Explanatory Statement
2. It may take some time to open a special Bank Account for the Private Placement of Securities and hence work in advance to open such an account.
3. Warrant is a Securities as per SCRA, 1956, and hence e-Form PAS 3 is required to be filed, though Form PAS 3 has no such field so it's advisable to attach a clarification letter and file e-Form PAS 3.
4. In case of preference shares if the Dividend has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.( Refer section 47)
5. In case of remittance of subscription of shares or securities are from overseas, as per FEMA 1999, the excess of 0.5% need to be refunded to the remitter and it cannot be waived. KYC is a must .
6. The provision u/s 42 requires that the company should adhere to the limit of 200 persons not just with respect to the number of persons who ultimately subscribe to the securities of the company, but also for making an offer or invitation to offer of the securities of the company.



## Adjudication Orders by Registrar of Companies (ROC)



# Adjudication Order of violation of Section 42

**Registrar of Companies (ROC), Pune-- Order : 30 June 2023**

**Cookiejar Technologies Private Limited**



## **Facts in brief**

1. Opening of Separate Bank Account ( for receipt of private placement share application money )
2. Filing of e-Form MGT-14 & e-Form PAS-3 within the prescribed time.

## **ROC levied penalty as follows**

### **1) Penalty u/s 42(9) :- For not filing return of allotment within time**

Particulars	Penalty (Per day)	No. of days	Total	Reduced penalty u/s 446B
Company	1000	397	3,97,000/-	2,00,000/-
Director	1000	397	3,97,000/-	1,00,000/-
Director	1000	397	3,97,000/-	1,00,000/-
Director	1000	397	3,97,000/-	1,00,000/-

**2) Under Section 42(10) For not opening separate bank account ;**

<b>Particulars</b>	<b>Penalty</b>	<b>Reduced penalty u/s 446B</b>
<b>Company</b>	74,95,830/-	2,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-

**3) Penalty u/s 42(10):- For utilization of money without filing the return of allotment**

<b>Particulars</b>	<b>Penalty</b>	<b>Reduced penalty u/s 446B</b>
<b>Company</b>	74,95,830/-	2,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-
<b>Director</b>	74,95,830/-	1,00,000/-

# Adjudication order under section 42

**Registrar of Companies (ROC), Bangalore- Order Dated : 25 May 2023**

Vidyutt Tech Services Private Limited



**Facts in brief** – The company received money prior to the passing of the Resolution AND the prior to the issue of the Offer Letter and later returned the money. filing of  
In the second instance, Company issued PPOL and allotted shares before filing a resolution with ROC.

**Contravention** - Section 42(3) read with Rule 14 (8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014

**ROC levied penalty U/S 42(10) read with 446B as follows :**

Sr No	Particulars	Penalty Imposed For Default 1	Penalty Imposed For Default 2
1	Company	2,00,000/-	2,00,000/-
2	Director	1,00,000/-	1,00,000/-
3	Director	1,00,000/-	1,00,000/-
<b>Total Penalty For Each Default</b>		<b>4,00,000/-</b>	<b>4,00,000/-</b>

## Adjudication order under section 42

**Registrar of companies (ROC), Hyderabad ( For State Of Telangana) Order dated : 16 May 2023**

Payswiff Technologies Private Limited

**Facts in brief ;**

Company Failed to keep money in a separate bank account and Erroneously utilized the funds before the allotment of shares.



**In the view of the facts above, ROC levied penalty u/s 42(10) as follows ;**

Particulars	Penalty as per act		Actual Penalty levied
	Total amount collected	Maximum amount levied	
Company	Rs. 7,83,24,231/-	Rs 2,00,00,000/-	Rs 80,00,000/-
Managing Director			Rs 20,00,000/-
Director			Rs 20,00,000/-
Director			Rs 20,00,000/-
Director			Rs 20,00,000/-
Director			Rs 20,00,000/-
Director			Rs 20,00,000/-

## Adjudication order under Section 62 and 42

**Registrar of companies (ROC), BANGLORE** Date of order : 5 July 2023

Krishikan Krishikan Private Limited (Small company)

### **Facts in brief ;**

The company issued and allotted Optionally Convertible Debentures(OCDs) thrice.

The said OCDs were issued as Right Issue u/s 62(1)(a), whereas, it should have been issued and allotted under 62(1)(c) on a preferential basis.

### **Violations by the Company in the given case**

**Section 62(1)(c)** – attracts liability u/s 450 penalties where no specific penalty is provided in the Act

**Section 42** – attracts liability u/s 42(10)



**Each issue of OCD is default and the company has issued OCDS thrice making it liable for each default**

1. Penalty u/s 450 read with 446B for violation of 62(1)(c)

Particulars	Default 1	Default 2	Default 3
Company	5000 (half of 10,000 as provided u/s 450)	5000/-	5000/-
Director	5000	5000/-	5000/-
Director	5000	5000/-	5000/-

2. Penalty imposed u/s 42(10) read with 446B for violation of section 42

Particulars	Default 1	Default 2	Default 3
Company	2,00,000 (Maximum Penalty U/S 446b)	2,00,000/-	2,00,000/-
Director	1,00,000(Maximum Penalty U/S 446b)	1,00,000/-	1,00,000/-
Director	1,00,000	1,00,000/-	1,00,000/-

## Adjudication order under Section 62 and 42

**Registrar of Companies (ROC), GUJARAT** Date of order: 5 July 2023

Alag Brainworks Limited

**Facts in brief:**

The Company failed to file MGT-14 within 30 days of passing a special resolution for the preferential issue u/s 62(1)(c).

Therefore, the company and its officers shall be liable for a penalty u/s 117.



Particulars	Penalty	Penalty for continuing failure	Maximum penalty	Total penalty imposed
Company	10,000	280 days* 100=28,000/-	2,00,000/-	38000/-
Director	10,000	280 days* 100=28,000/-	2,00,000/-	38000/-
Director	10,000	280 days* 100=28,000/-	2,00,000/-	38000/-
Director	10,000	280 days* 100=28,000/-	2,00,000/-	38000/-

## Adjudication order under Section 62

**Registrar of Companies (ROC), Chennai** Date of order: 9 February 2023

Guvi Geek Network Private Limited



### **Facts In Brief;**

1. Board Resolution was passed for the Grant of 327 Options under the scheme to identified employees during the financial year-2021-2022 which exceeds 1% of the issued capital of the Company.
2. The approval of shareholders by way of separate resolution was not obtained for approval to grant stock options to identified employees exceeding 1% of the issued capital.
3. After the Company was made aware of such contravention, it took approval by way of a Special Resolution for ratification and approval for the grant of Options to identified employees exceeding 1% of the issued capital of the Company during the financial year 2021-2022.



**ROC levied penalty u/s 450 as follows**

<b>Particulars</b>	<b>Amount of penalty</b>	<b>Additional penalty for continuing offence (Delay of 522 days)</b>	<b>Total amount of Penalty Imposed</b>
Company	Rs.10,000/-	Rs.5,22,000/- (Maximum Limit upto Rs.2,00,000/-)	Rs.2,10,000/-
Director	Rs.10,000/-	Rs.5,22,000/- (Maximum Limit upto Rs.50,000/-)	Rs.60,000/-
director	Rs.10,000/-	Rs.5,22,000/- (Maximum Limit upto Rs.50,000/-)	Rs.60,000/-

## Adjudication order under section 42

**Registrar of Companies (ROC), NCT of Delhi & Haryana** Date of order: 1 March 2023

Anbronica Technologies Private Limited. (*Small company*)

### **Facts in brief**

Company issued CCDs using the website of another company which is engaged in business of running a Technology based community platform .

**Contravention by company** : Section 42(7) with respect to public advertisement

### **ROC levied penalty u/s 42(10) read with 446B as follows**

Particulars	Penalty Levied
Company	2,00,000/- (Maximum Penalty u/s 446b)
Director	1,00,000/- (Maximum Penalty u/s 446b)
Director	1,00,000/- (Maximum Penalty u/s 446b)



**Amita Desai & Co.**  
***Company Secretaries***

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