



**RAAM &  
ASSOCIATES LLP**  
COMPANY SECRETARIES & TRADEMARK AGENT &  
IP ATTORNEYS

**PREFERENTIAL ISSUE OF SHARES U/S 62 S.T. CONDITION U/S 42**

## SECTION 62(1)(C) : PREFERENTIAL ISSUE OF SHARES

to any persons,

if it is authorised by a special resolution,

whether or not those persons include the persons referred to in clause (a) or clause (b),

either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report <sup>6</sup>[of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions [as may be prescribed](#)]

# **RULE 13(1)**

## **MEANING – PREFERENTIAL OFFER**

Preferential Offer' means an issue of shares or other securities, 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;

the expression, “shares or other securities” means 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.

# RULE 13(2)

## CONDITION– PREFERENTIAL OFFER

the issue is authorized by **its articles of association**;

the issue has been authorized by a **special resolution** of the members;

# RULE 13(2)

## CONDITION– PREFERENTIAL OFFER

### EXPLANATORY STATEMENT

- i. the objects of the issue;
- ii. the total number of shares or other securities to be issued;
- iii. the price or price band at/within which the allotment is proposed;
- iv. basis on which the price has been arrived at along with report of the registered valuer;
- v. relevant date with reference to which the price has been arrived at;
- vi. the class or classes of persons to whom the allotment is proposed to be made;
- vii. intention of promoters, directors or key managerial personnel to subscribe to the offer;
- viii. the proposed time within which the allotment shall be completed;
- ix. the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- x. the change in control, if any, in the company that would occur consequent to the preferential offer;
- xi. the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
- xii. the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- xiii. The pre issue and post issue shareholding pattern of the company in the specified format-

## RULE 13(2)

### CONDITION– PREFERENTIAL OFFER

the allotment of securities on a preferential basis shall be completed within a period of **twelve months** from the date of passing of the special resolution.

if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, **another special resolution** shall be passed for the company to complete such allotment thereafter.

the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of **valuation report of a registered valuer**;

## RULE 13(2)

### CONDITION– PREFERENTIAL OFFER

where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-

- either **upfront** at the time when 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 thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares
- Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule.”]

## RULE 13(2)

### CONDITION– PREFERENTIAL OFFER

where shares or other securities are to be allotted for **consideration other than cash**, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

where the preferential offer of shares is made for a non-cash consideration, such **non-cash consideration** shall be **treated** in the following manner in the **books of account** of the company-

- where the **non-cash consideration** takes the form of a **depreciable or amortizable asset**, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
- where clause it is not applicable, it shall be expensed as provided in the accounting standards.



## **RULE 13(2)**

### **CONDITION– PREFERENTIAL OFFER**

The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.”]

# INDEX

42(1)	PRIVATE PLACEMENT
42(2)	IDENTIFIED PERSON
42(3)	PRIVATE PLACEMENT OFFER AND APPLICATION
42(4)	MODE OF SUBSCRIPTION
42(5)	NO FRESH OFFER OR INVITATION
42(6)	ALLOTMENT & SEPARATE BANK A/C
42(7)	RESTRICTION ON ADVERTISEMENT OR MEDIA ETC
42(8)	RETURN OF ALLOTMENT WITHIN 15 DAYS
42(9)	DEFAULT_PENALTY
42(10)	CONTRAVENTION
42(11)	DEEMED PUBLIC OFFER

# SECTION 42 (1) & (2)– PRIVATE PLACEMENT

Section 42(1) : A company may, subject to the provisions of this section, make a private placement of securities

Section 42(2) : A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

## SEC 42 (3) : PRIVATE PLACEMENT OFFER & APPLICATION

Sec 42(3) : A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed

Provided that the private placement offer and application **shall not carry any right of renunciation.**

## SEC 42 (4) :MODE OF SUBSCRIPTION

Sec 42(4) : Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8)..

## **SEC 42 (5) : NO FRESH OFFER OR INVITATION**

No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

## SEC 42 (6): ALLOTMENT & SEPARATE BANK ACCOUNT

A company making an offer or invitation under this section shall allot its securities within sixty 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 fifteen days from the expiry of sixty 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 twelve per cent. per annum from the expiry of the sixtieth 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—

- for adjustment against allotment of securities; or
- for the repayment of monies where the company is unable to allot securities.

## **SEC 42 (7,8 & 9) :ADVERTISMENT, RETURN OF ALLOTMENT & DEFAULT**

Sec 62(7) :No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

Sec 62(8) :A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed

Sec 62(9) :If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.



## SECTION 42(10): CONTRAVENTION

the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and

the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

## SECTION 42(11): DEEMED PUBLIC OFFER

Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable].

# INDEX

RULE 14(1)	PRIOR APPROVAL OF SHAREHOLDER THROUGH SPECIAL RESOLUTION;
RULE 14(2)	LIMIT OF PERSONS TO WHOM OFFER TO BE MADE;
RULE 14(3)	PRIVATE PLACEMENT OFFER & APPLICATION : FORM PAS-4;
RULE 14(4)	RECORD;
RULE 14(5)	UPDATING BANK DETAILS;
RULE 14(6)	FORM PAS-3;
RULE 14(7)	NOT APPLICABLE;
RULE 14(8)	FILING OF RESOLUTION

# RULE 14(1) PRIOR APPROVAL OF SHAREHOLDERS THROUGH SPECIAL RESOLUTION

a company shall not make an offer or invitation. to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution. for each of the offers or invitations and following disclosure in explanatory statement

- particulars of the offer including date of passing of Board resolution;
- kinds of securities offered and the price at which security is being offered:
- basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- name and address of valuer who performed valuation;
- amount which the company intends to raise by way of such securities;
- material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

# RULE 14(1) PRIOR APPROVAL OF SHAREHOLDERS THROUGH SPECIAL RESOLUTION

Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub section (1) of [section 180](#) and in such cases relevant Board resolution under clause (c) of subsection (3) of [section 179](#) would be adequate:

Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of [section 180](#), it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Provided also that in case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only in a year for all the allotments to such buyers during the year.]

## RULE 14(2) : LIMIT OF PERSONS

For the purpose of sub-section (2) of [section 42](#), an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year:

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of [section 62](#) shall not be considered while calculating the limit of two hundred persons.

Explanation.- For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

## RULE 14(3) : FORM PAS-4 – PRIVATE PLACEMENT OFFER

A private placement offer cum application letter shall be in the form of an application in <sup>1</sup>[[Form PAS-4](#)] 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 name of such person pursuant to sub-section (3) of [section 42](#):

Provided that no person other than the person so addressed i.e the private placement offer cum application letter shall be allowed to apply through such application [form](#) and any application not conforming to this condition shall be treated as invalid

## RULE 14(4) & (5) : RECORD & UPDATING BANK DETAILS

The company shall maintain a complete record of private placement offers in [Form PAS-5](#).

The payment to be made for subscription to bank account of the person subscribing to such keep the record of the bank account from where been received:

- Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application:
- Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.



## RULE 14(6) : FORM PAS-3- RETURN OF ALLOTMENT

A return of allotment of securities under [section 42](#) shall be filed with the Registrar within fifteen days of allotment in [Form PAS-3](#) and with the fee as provided in the Companies (Registration offices and [Fees](#)) Rules, 2014 along with a complete list of all the allottees containing-

- the full name, address, permanent Account Number and E-mail ID of such security holder;
- the class of security held;
- the date of allotment of security ;
- the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if these securities were issued for consideration other than cash.

## **RULE 14(7) :NOT APPLICABLE**

The provisions of sub-rule (2) shall not be applicable to -

- (a) non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act,1934 (2 of 1934) and
- (b) housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987 (53 of 1987),

if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis:

Provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.

## RULE 14(8) :FILING OF RESOLUTION

A company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry:

- Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of subsection (3) of [section 179](#)]

## **DISCLAIMER**

This note was created using various articles extracted from research articles available online and it contains general information about legal matters. The information is not advice, and should not be treated as such. The legal information on this note is provided “as is” without any representations or warranties, express or implied.

You must not rely on the information on this note as an alternative to legal advice from your attorney or other professional legal services provider. If you have any specific questions about any legal matter you should consult your attorney or other professional legal services provider.

You should never delay seeking legal advice, disregard legal advice, or commence or discontinue any legal action because of information on this note.

