

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Government of India
Ministry of Corporate Affairs
Draft Notification

New Delhi, 15.02.2018

G.S.R. __ (E). - In exercise of the powers conferred by section 42, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014, namely:-

1. (1) These rules may be called the **Companies (Prospectus and allotment of Securities) Amendment Rules, 2018**.
 - (2) They shall come into force from the date of their publication in the official Gazette.
2. In the Companies (Prospectus and allotment of Securities) Rules, 2014, (hereinafter referred to as the principal rules), for rule 14, the following rule shall be substituted, namely:-

Rule 14:

1. For the purpose of sub-section (2) and (3) of section 42, 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:

Provided that in the explanatory statement annexed to the notice for the general meeting, the following disclosure shall be made:

- (i) Particulars of the offer including date of passing board resolution, members resolution, kinds of securities offered, 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 securities, terms of raising of securities, proposed time schedule, purposes and 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 ;
- (ii) Management's perception of risk factors;
- (iii) Details of default, if any, including therein the amount involved, duration of default and present status, in repayment of –
 - a) statutory dues;

- b) debentures and interest thereon;
 - c) deposits and interest thereon;
 - d) loan from any bank or financial institution and interest thereon.
- (iv) Names, designation, address and phone number, email ID of the nodal/compliance officer of the company, if any, for the private placement offer process;
- (v) details of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the offeree company during the last three years immediately preceding the year of the circulation of the offer letter and any direction issued by such Ministry or Department or statutory authority upon conclusion of such litigation or legal action shall be disclosed;
- (vi) Details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous company law in the last three years immediately preceding the year of circulation of offer letter in the case of company and all of its subsidiaries. Also if there were any prosecutions filed (whether pending or not) fines imposed, compounding of offences in the last three years immediately preceding the year of the offer letter and if so, section-wise details thereof for the company and all of its subsidiaries;
- (vii) Details of acts of material frauds committed against the company in the last three years, if any, and if so, the action taken by the company.
- (viii) A declaration by the directors that:
- a) the company has complied with the provisions of the Act and the rules made thereunder;
 - b) the compliance with the Act and the rules does not imply that payment of dividend or interest or repayment of debentures, if applicable, is guaranteed by the Central Government;
 - c) the monies received under the offer shall be used only for the purposes and objects indicated in the Offer letter;

Provided further that in case of offer or invitation for non-convertible debentures, in case the amount exceeds the limit as specified in section 180 (1)(c), it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year.

2. (a) 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 -

- i. the restrictions under sub-rule (2) would be reckoned individually for each kind of security that is equity share, preference share or debenture;
 - ii. the requirement of provisions of sub-section (2) of section 42 shall apply in respect of offer or invitation of each kind of security and no offer or invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed;
- (b). (It was deliberated and decided that since there is no requirement for minimum paid up share capital in the private and public company, this requirement will be in spirit of ease of doing business)
3. A private placement offer letter shall be accompanied by an application form in 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 names of such persons in accordance with sub-section (3) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid:

Provided further that the private placement offer - cum - application shall include the following disclosure:

- a) Date of passing of board resolution;
- b) Date of passing of resolution in the general meeting, authorizing the offer of securities;
- c) Kinds of securities offered (i.e. whether share or debenture) and class of security;
- d) price at which the security is being offered including the premium, if any, alongwith justification of the price;
- e) name and address of the valuer who performed valuation of the security offered;
- f) Amount which the company intends to raise by way of securities;
- g) Terms of raising of securities: Duration, if applicable, Rate of dividend or rate of interest, mode of payment and repayment;
- h) Proposed time schedule for which the offer letter is valid;
- i) Purposes and objects of the offer;
- j) contribution being made by the promoters or directors either as part of the offer or separately in furtherance of such objects;
- k) Principle terms of assets charged as security, if applicable;

Explanation- For the purpose of this rule, it is hereby clarified that the date of private placement offer letter shall be deemed to be the date of circulation of private placement offer letter.

4. In terms of proviso to sub- section (5) of section 42, a company may at any time make more than one issue of securities to qualified institutional buyers, or to employees of the company.
5. The company shall maintain a complete record of private placement offers in Form **PAS-5**:

6. The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have 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 provision of above sub Rule shall not apply in case of issue of shares for conversion of loan

7. 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 security holders containing-
- (i) the full name, address, Permanent Account Number and E-mail ID of such security holder;
 - (ii) the class of security held;
 - (iii) the date of allotment of security ;
 - (iv) the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

(Since the limit of Rs. 20,000 is being removed for all companies, this specific exemption to class of companies is irrelevant)

(.....)

....., Jt. Secy.

Annexure

FORM NO PAS - 4

Part - A

PRIVATE PLACEMENT OFFER cum application LETTER

[Pursuant to section 42 and rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014]

The Private Placement Offer Letter shall contain the following:

1. GENERAL INFORMATION

- (i) Name, address, website, if any, and other contact details of the company indicating both registered office and corporate office;
- (ii) Date of incorporation of the company;
- (iii) Business carried on by the company and its subsidiaries with the details of branches or units, if any;
- (iv) Brief particulars of the management of the company;
- (v) Names, addresses, DIN and occupations of the directors;
- (vi) Management's perception of risk factors;
- (vii) Details of default, if any, including therein the amount involved, duration of default and present status, in repayment of – i) statutory dues; ii) debentures and interest thereon; iii) deposits and interest thereon; iv) loan from any bank or financial institution and interest thereon.
- (viii) Names, designation, address and phone number, email ID of the nodal/ compliance officer of the company, if any, for the private placement offer process;
- (ix) Any Default in Annual filing of the Company
 - (i) Financial position of the Company for the last 3 financial Year

2. Particulars of offer:

- (ii) Date of passing of board resolution;
- (iii) Date of passing of resolution in the general meeting, authorizing the offer of securities;
- (iv) the objects of the issue;
- (v) Kind of securities offered (i.e. whether share or debenture) and class of security; the total number of shares or other securities to be issued;
- (vi) price at which the security is being offered including the premium, if any, alongwith justification of the price;;
- (vii) name and address of the valuer who performed valuation of the security offered; **basis**

on which the price has been arrived at along with report of the registered valuer;

- (viii) relevant date with reference to which the price has been arrived at;
- (ix) the class or classes of persons to whom the allotment is proposed to be made;
- (x) intention of promoters, directors or key managerial personnel to subscribe to the offer;
- (xi) the proposed time within which the allotment shall be completed;
- (xii) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- (xiii) the change in control, if any, in the company that would occur consequent to the preferential offer;
- (xiv) 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;
- (xv) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- (xvi) Amount which the company intends to raise by way of securities;
- (xvii) Terms of raising of securities: Duration, if applicable, Rate of dividend or rate of interest, mode of payment and repayment;
- (xviii) Proposed time schedule for which the offer letter is valid;
- (xix) Purposes and objects of the offer;
- (xx) contribution being made by the promoters or directors either as part of the offer or separately in furtherance of such objects;
- (xxi) Principle terms of assets charged as security, if applicable;
- (xxii) The details of significant and material orders passed by the Regulators, Courts and Tribunals impacting the going concern status of the company and its future operations.
- (xxiii) The pre issue and post issue shareholding pattern of the company in the following format-

Sr No	Category	Pre-issue		Post-issue	
		No shares held	% of share holding	No shares held	% of share holding

A	Promoters' holding		
1	Indian		
	Individual		
	Bodies corporate		
	Sub-total		
2	Foreign promoters		
	sub-total (A)		
B	Non-promoters' holding		
1	Institutional investors		
2	Non-institution		
	Private corporate bodies		
	Directors and relatives		
	Indian public		
	others (including NRIs)		
	Sub-total (B)		
	GRAND TOTAL		

2. Mode of Payment for subscription –

- Cheque
- Demand Draft
- Other Banking Channels

3. DISCLOSURES WITH REGARD TO INTEREST OF DIRECTORS, LITIGATION ETC.

- i. Any financial or other material interest of the directors, promoters or key managerial personnel in the offer and the effect of such interest in so far as it is different from the interests of other persons.
- ii. details of any litigation or legal action pending or taken by any Ministry or Department of the Government or a statutory authority against any promoter of the offeree company during the last three years immediately preceding the year of the circulation of the offer letter and any direction issued by such Ministry or Department or statutory authority upon conclusion of such litigation or legal action shall be disclosed
- iii. remuneration of directors (during the current year and last three financial years);
- iv Related party transactions entered during the last three financial years immediately preceding the year of circulation of offer letter including with regard to loans made or, guarantees given or securities provided
- v. Summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of circulation of offer letter and of their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remark
- vi. Details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous company law in the last three years immediately preceding the year of circulation of offer letter in the case of company and all of its subsidiaries. Also if there were any prosecutions filed (whether pending or not) fines imposed, compounding of offences in the last three years immediately preceding the year of the offer letter and if so, section-wise details thereof for the company and all of its subsidiaries
- vii. Details of acts of material frauds committed against the company in the last three years, if any, and if so, the action taken by the company

4. FINANCIAL POSITION OF THE COMPANY

- (a) the capital structure of the company in the following manner in a tabular form-
 - (i) (a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);
 - (b) size of the present offer;
 - (c) paid up capital
 - (A) after the offer;.
 - (B) after conversion of convertible instruments (if applicable)
 - (d) share premium account (before and after the offer)
 - (ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration

Provided that the issuer company shall also disclose the number and price at which each of the allotments were made in the last one year preceding the date of the offer letter separately indicating the allotments made for considerations other than cash and the details of the

consideration in each case;

(b) Profits of the company, before and after making provision for tax, for the three financial years immediately preceding the date of circulation of offer letter;

(c) Dividends declared by the company in respect of the said three financial years; interest coverage ratio for last three years (Cash profit after tax plus interest paid/interest paid)

(d) A summary of the financial position of the company as in the three audited balance sheets immediately preceding the date of circulation of offer letter;

(e) Audited Cash Flow Statement for the three years immediately preceding the date of circulation of offer letter;

(f) Any change in accounting policies during the last three years and their effect on the profits and the reserves of the company.

PART – B

(To be filed by the Applicant)

(i) Name

(ii) Father's name

(iii) Complete Address including Flat/House Number, Street, Locality, Pin Code

(iv) Phone number, if any

(v) email ID, if any

(vi) PAN Number

(vii) Bank Account Details:

Signature

Initial of the Officer of the company designated to keep the Record

5. A DECLARATION BY THE DIRECTORS THAT- a. the company has complied with the provisions of the Act and the rules made thereunder; b. the compliance with the Act and the rules does not imply that payment of dividend or interest or repayment of debentures, if applicable, is guaranteed by the Central Government; c. the monies received under the offer shall be used only for the purposes and objects indicated in the Offer letter;

I am authorized by the Board of Directors of the Company vide resolution number _____ dated _____ to sign this form and declare that all the requirements of Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters

incidental thereto have been complied with. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the promoters subscribing to the Memorandum of Association and Articles of Association It is further declared and verified that all the required attachments have been completely, correctly and legibly attached to this form.

Signed

Date:

Place:

Attachments:-

- Copy of board resolution
- Copy of shareholders resolution
- Copy of _____
- Optional attachments, if any