

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

Government of India
Ministry of Corporate Affairs
Notification

New Delhi, the07th August, 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) Second 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:-

"14. Private placement.- (1) For the purposes of sub-section (2) and sub-section (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 shareholders' approval, the following disclosure shall be made:-

- (a) particulars of the offer including date of passing of Board resolution;
- (b) kinds of securities offered and the price at which security is being offered;
- (c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- (d) name and address of valuer who performed valuation;
- (e) amount which the company intends to raise by way of such securities;

(f) 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:

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 sub-section (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.

(2) 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.

(3) A private placement offer cum application letter shall be in the form of an application in 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 in 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.

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

(5) 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 payment for subscription has 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.

(6) 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-

- (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.

(7) 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.

(8) 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 sub-section (3) of section 179.

3. In the principal rules, in the Annexure, –

(i) for “Form No. PAS-4”, the following Form shall be substituted, namely:-

“FORM PAS – 4

[see rule 14(3)]

Part - A

PRIVATE PLACEMENT OFFER CUM APPLICATION LETTER

The Private Placement Offer cum Application 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, Director Identification Number (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 – (a) statutory dues; (b) debentures and interest thereon; (c) deposits and interest thereon; (d) loan from any bank or financial institution and interest thereon;
- (viii) Name, 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 under the Companies Act, 2013 or the rules made thereunder.

2. Particulars of offer:

- (i) Financial position of the Company for the last 3 financial years;

- (ii) Date of passing of Board resolution;
- (iii) Date of passing of resolution in the general meeting, authorising the offer of securities;
- (iv) 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;
- (v) Price at which the security is being offered including the premium, if any, alongwith justification of the price;
- (vi) Name and address of the valuer who performed valuation of the security offered, and basis on which the price has been arrived at along with report of the registered valuer;
- (vii) Relevant date with reference to which the price has been arrived at;
[Relevant Date means a date atleast thirty days prior to the date on which the general meeting of the company is scheduled to be held]
- (viii) The class or classes of persons to whom the allotment is proposed to be made;
- (ix) Intention of promoters, directors or key managerial personnel to subscribe to the offer (applicable in case they intend to subscribe to the offer) [not required in case of issue of non- convertible debentures];
- (x) The proposed time within which the allotment shall be completed;
- (xi) The names of the proposed allottees and the percentage of post private placement capital that may be held by them [not required in case of issue of non- convertible debentures];
- (xii) The change in control, if any, in the company that would occur consequent to the private placement;
- (xiii) the number of persons to whom allotment on preferential basis/private placement/ rights issue has already been made during the year, in terms of number of securities as well as price;
- (xiv) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer;
- (xv) Amount which the company intends to raise by way of proposed offer of securities;
- (xvi) Terms of raising of securities: Duration, if applicable, rate of dividend or rate of interest, mode of payment and repayment;
- (xvii) Proposed time schedule for which the private placement offer cum application letter is valid;

- (xviii) Purposes and objects of the offer;
- (xix) Contribution being made by the promoters or directors either as part of the offer or separately in furtherance of such objects;
- (xx) Principle terms of assets charged as security, if applicable;
- (xxi) 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;
- (xxii) The pre-issue and post-issue shareholding pattern of the company in the following format:-

Sl. No.	Category	Pre-issue		Post-issue	
		No. of shares held	% of share holding	No. of 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-institutional Investors				
	Private corporate bodies				
	Directors and relatives				

	Indian public		
	others [including Non-resident Indians(NRIs)]		
	Sub-total (B)		
	GRAND TOTAL		

3. Mode of payment for subscription -

- Cheque
- Demand Draft
- Other Banking Channels

4. 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 issue of the private placement offer cum application 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 issue of private placement offer cum application 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 issue of private placement offer cum application 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, 2013 or any previous company law in the last three years immediately preceding the year of issue of private placement offer cum application letter in the case of company and all of its subsidiaries, and 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 private placement offer cum application 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.

5. 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

(I) after the offer;

(II) 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 private placement offer cum application 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 issue of private placement offer cum application 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 issue of private placement offer cum application letter;

(e) Audited Cash Flow Statement for the three years immediately preceding the date of issue of private placement offer cum application 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

6. A DECLARATION BY THE DIRECTORS THAT- (a) the company has complied with the provisions of the Companies Act, 2013 and the rules made thereunder; (b) the compliance with the said Act and the rules made thereunder do not imply that payment of dividend or interest or repayment of preference shares or 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 private placement offer cum application letter;

I am authorised by the Board of Directors of the company vide resolution number _____ dated _____ to sign this form and declare that all the requirements of the 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".

(ii) in Form PAS-5, for the brackets, words and figures "(Section 42(7) and Rule 14(3) of the Companies (Prospectus and Allotment of Securities) Rules, 2014)", the brackets, words and figures "[see rule 14(4)]" shall be substituted.

[File No. 1/21/2013-CL-V]


(K.V.R. Murty) 07/8/18

Joint Secretary to the Government of India

Note:— The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 251(E), dated the 31st March, 2014 and subsequently amended *vide* number G.S.R. 424(E), dated the 30th June, 2014 and number G.S.R. 430 (E), dated the 7th May, 2018.