



Private Placement

In the competitive era, it is important for all the companies to have an adequate capital to run the business as well as to meet the working capital of the company.



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All You Need to Know About Private Placement of Securities

In the competitive era, it is important for all the companies to have an adequate capital to run the business as well as to meet the working capital of the company. Company may issue of shares and securities by the way of:

- ✓ Prospectus
- ✓ Private placement
- ✓ Right issue and bonus shares.

What is Private Placement?

When the securities are not sold through public offering, but rather by private offering is termed as Private Placement. In this case company offers securities to small group of investors chosen by the company. All monies Payable towards subscription of securities and shares shall be paid through demand draft, cheques and not by cash. So, companies employing this type of financing do not need to comply with the same reporting and disclosure requirement as complied under public offering. It has minimal regulatory compliances and standards and the investment does not requires prospectus like in case of issue through IPO. Private placement does not require disclosure of detailed financial statement.

What are the Advantage of Private Placement?

✓ Time Saving and effective Costing

Financing equity through initial public offer or further public offering is a time taking process and takes time to configure and the cost associated of doing this process is a burden on the company.

✓ **Private Offering**

Private placement is the company's ability to remain private. Less negotiation is required before the company receives funding from the small investors.

✓ **Funding based prior performance of the company**

Potential investor receiving the private placement learns about the business team as well as the performance of the company.

✓ **Selected members are involved in sale of securities while raising capital through Private Placement.**

Loopholes in issuing shares through Private Placement

- ✓ As additional risk is involved in private placement, buyer may not buy a bond unless the shares/bond is secured by the collateral security.
- ✓ The expected rate of return is less in comparison to private placement as compare to public traded security.

Factors and Documents Required for Private Placement

Before private placement, various factors and information is required to be furnished to the category of potential investors to maintain the confidence before investing -

- ✓ Details of capitalization of the company (Both prior and after the investment).
- ✓ Business Backgrounds along with the relevant biographical information, general industry and competition information.
- ✓ Details about company's description to distribute the use of money received through private placement.

- ✓ History and past performance of the company (including company's goal, product description).
- ✓ Details regarding the offering, including rights, restrictions, price, minimum subscription amounts, management fees, withdrawals, investor qualification.
- ✓ Detail process and instruction of the proposed investment and supplemental information to influence potential investor's decision to invest.

What is the Criteria for Private Placement?

Certain criteria require to be fulfilled for private placement process-

- ✓ Maximum 200 persons in a F.Y. (200 for each kind of security)
- ✓ QIBs and employees under ESOP are not considered
- ✓ The offer of securities other than public, rights or bonus offer amounts to a private placement and governed by the section 42.

Terms Frequently Used in Private Placement

✓ Deemed public offer

Applicable to both Private and Public company

- ✓ Offer made to more than 200 people in a F.Y. shall be deemed to be public offer.
- ✓ Private placement will be deemed public offer in case every private placement not complying with the requirements of the section 42.

✓ QIB-Qualified Institutional Buyer

- ✓ a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with the Board;

- ✓ a foreign portfolio investor registered with the Board other than Category III foreign portfolio investor;
- ✓ a public financial institution as defined under Companies Act;
- ✓ a scheduled commercial bank;
- ✓ multilateral and bilateral development financial institution;
- ✓ a state industrial development corporation;
- ✓ an insurance company registered with the Insurance Regulatory and Development Authority;
- ✓ a provident fund and pension fund with minimum corpus of twenty-five crore rupees;
- ✓ National Investment Fund set up by resolution.
- ✓ insurance funds set up and managed by army, navy or air force of the Union of India and insurance funds set up and managed by the Department of Posts, India;
- ✓ systemically important non-banking financial companies.

Terms Frequently Used in Private Placement

- ✓ Private placement offer letter given by company to the subscribe through issue
- ✓ Application form to accompany offer letter.
- ✓ Private offer to previously approve by the Special Resolution.
- ✓ Offer to maximum of 200 people in financial year.
- ✓ Offer counted separately for each kind of security.
- ✓ No further offer till completion of earlier offer.

- ✓ Payment from subscriber's bank account
- ✓ Investment of Rs 20,000 per person
- ✓ Filing of records with registrar in FORM-PAS-5 along with PAS-4
- ✓ Allotment of Securities within 60 days from the date of receipt of application
- ✓ Return of Allotment to Registrar shall be filed with the registrar within 30 days of allotment in FORM NO.PAS-3.

Process of Private Placement-The Ministry of Corporate Affairs has made significant amendments in the procedure of Private Placement- (After Amendment)

What is the Criteria for Private Placement?

- ✓ The Ministry of Corporate Affairs has made significant changes in the procedure of Private Placement and company shall apply certain provisions at the time of making Private Placement-
- ✓ A company may make the private placement subject to the provision of the section 42.
- ✓ Private Placement shall be made only to a selected group of person who have been identified by the board as "Identified Person whose number shall not exceed 50 fifty or such higher amount as may be prescribed which excludes qualified institutional buyers and employees of the company to whom ESOP has been offered by the Company.
- ✓ The requirement of private placement offer letter –
 - a) Accompanied by a serially numbered application form
 - b) Addressed specifically to the person to whom an offer is being made
 - c) Letter of offer to be issued either in writing / electronically
 - d) Within 30 days of recording names in the list
 - e) No person other than the addressee could apply through an application form.
 - f) Minimum Offer of Securities-At least Rs 20000 per person.
 - g) Provision to make multiple issues of securities as part of one offer.
- ✓ A special resolution will not be required in case of an issue of non-convertible debentures and where the aggregate of the borrowings of the company do not exceed the aggregate of its paid-up share capital and free reserves.
- ✓ No allotment /offer of securities shall be made unless the allotment with respect to earlier securities has been completed / withdrawn by the company.

- ✓ Allotment within 60 days from the date of receipt of application money
- ✓ No company shall release any advertisement or through any distribution channel to inform the public at large about the private placement.
- ✓ A Return of Allotment shall be filed to the registrar within 15 days from the date of allotment.
- ✓ Complete record of private placement in Form PAS-5 i.e. list of allottees, number of securities, address and any such information as may be

Note: Details regarding type and price of the securities to be offered, objects and the promoter's interest along with the explanatory statement issued along with notice of shareholders' approval.

Conclusion

Private Placement is an important aspect of enhancing capital and the involvement in the accredited investors and can be used for various purposes. The process also helps the company in emerging financial technology offerings. Private placement is a less expensive process and is the fastest way of raising capital.



Thank You!

