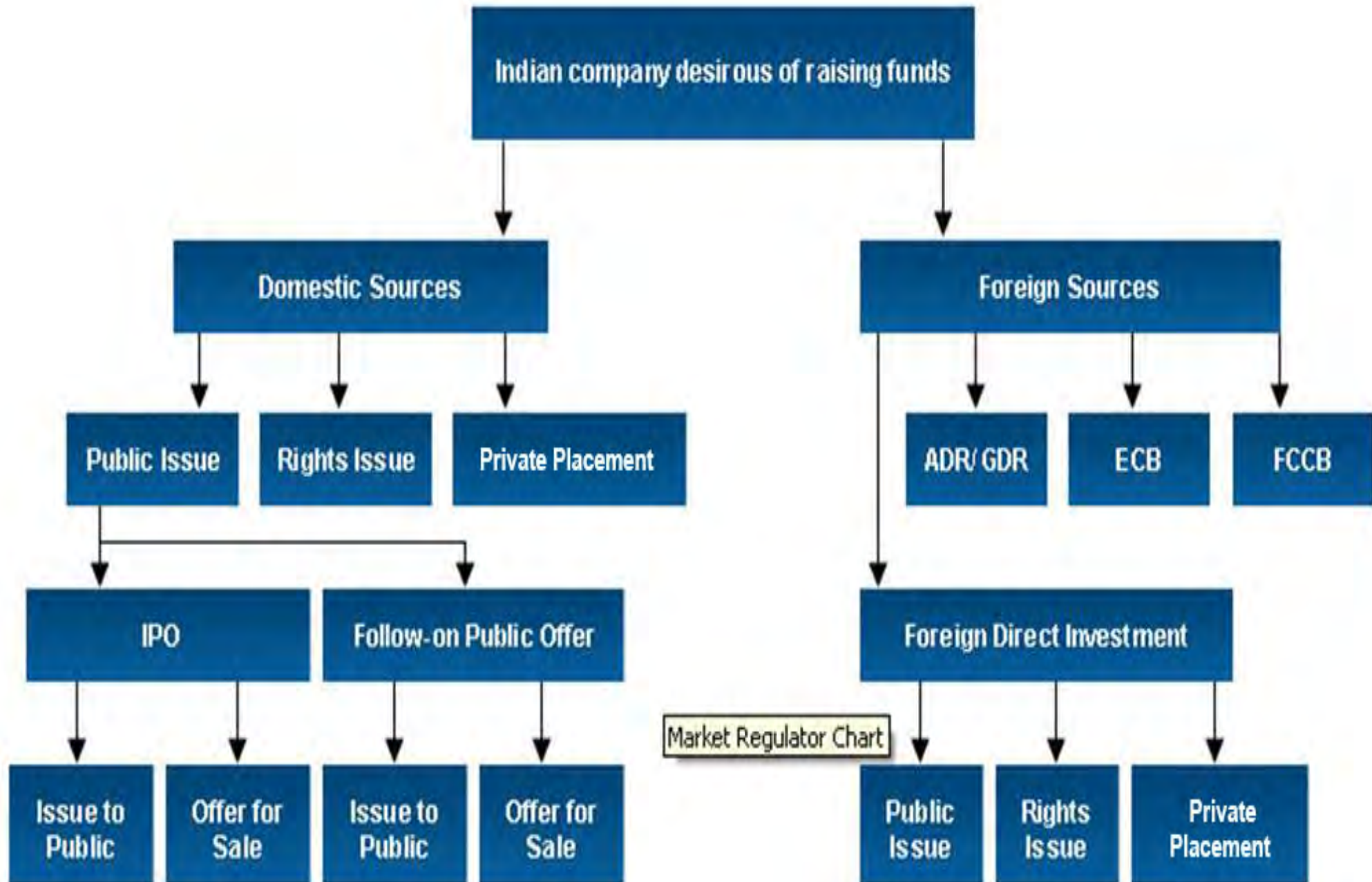


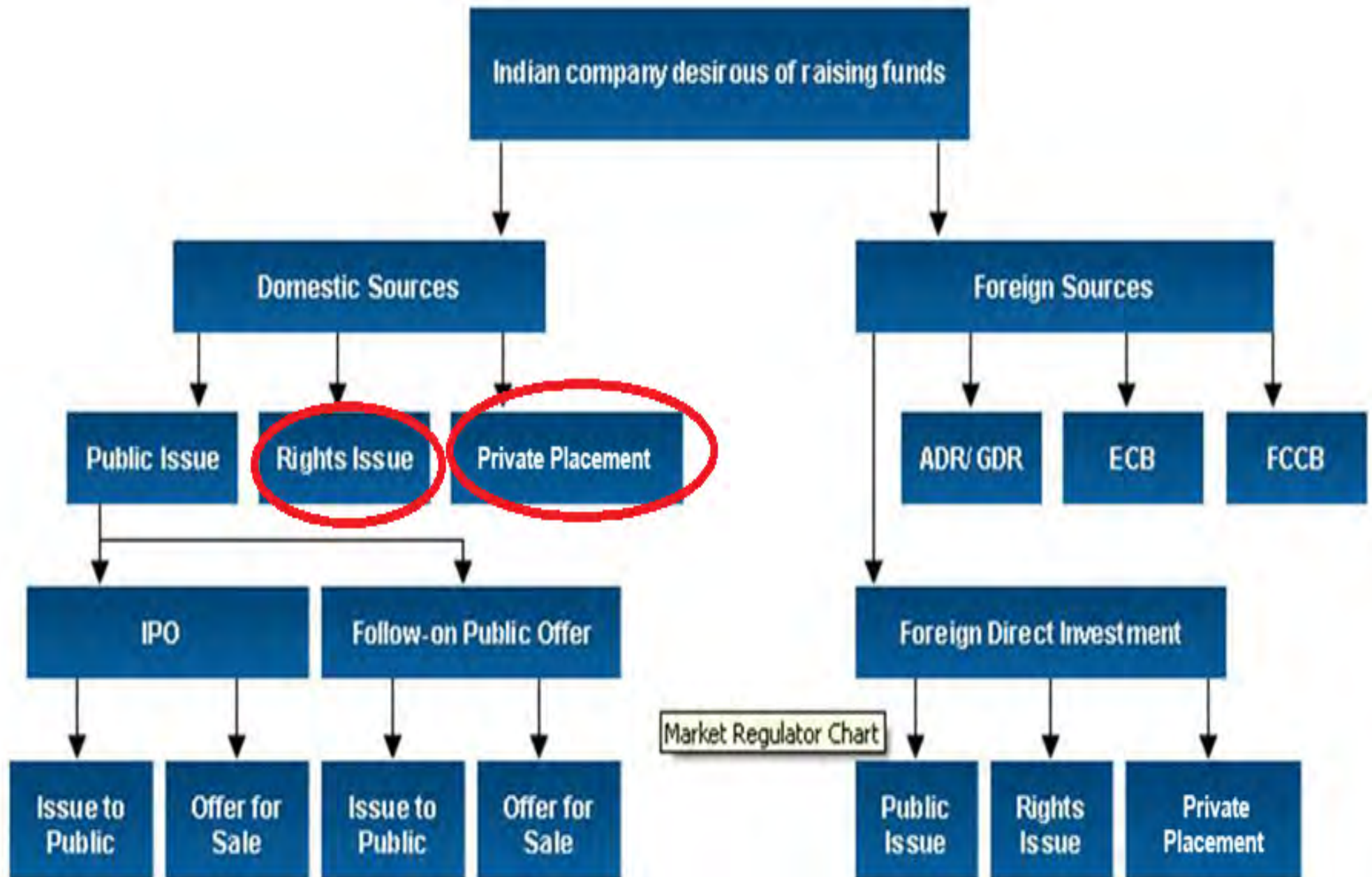


Fund Raising via Private Placement & Right Issue

Modes Available For Indian Companies For Raising Funds



Modes Available For Indian Companies For Raising Funds





Chapter III: Prospectus And Allotment of Securities

- **Section 42:** Offer or invitation for subscription of securities on private placement
 - Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014

Chapter IV: Share Capital and Debentures

- **Section 62:** Further Issue of Share Capital
 - Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014

Background

Companies Act 1956 to Companies Act 2013

Earlier, In terms of Section 67(3) of the Companies Act, 1956 , the Following offer of shares or debentures offers of shares or debentures or invitation to subscriber for shares or debentures to any section of the public were not regarded as public issues and **PRIVATE PLACEMENT** was not Defined anywhere.

a. Where shares or debentures are available for subscription or purchase only to those receiving the offer/invitation.

b. Offer/invitation is domestic concern of the issuer and those receiving the offer/invitation

These above were excluded from the scope of public issue and therefore, impliedly were referred as private placement.

Thereafter, in **Sahara India Real Estate Corporation's case**, the Supreme Court interpreted the above said Section 67(3) of the Companies Act, 1956 in the sense that if the limit of 49 persons is violated and the shares/ debentures are allotted to more than 49 persons, it would be treated as public issue.

Keeping in mind the interpretation by the Supreme Court in Sahara case, the Companies Act, 2013 defines Private Placement to mean any offer of securities or invitation to subscribe securities by a company to select group of persons not exceeding 200 [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option], in a financial year through issue of a private placement offer letter.



SAHARA
CASE

SHARDA
CHIT
FUND
SCAM

**Ponzi
Schemes**

Big Difference

The Companies Act, 1956

The Companies Act, 2013

“Private placement” which was not defined in the 1956 Act, Securities and Exchange Board of India Act, 1992 (“SEBI Act”) or Securities Contracts (Regulations) Act, 1956 (“SCRA”) has now been defined under the 2013 Act.

The private placement offer can be made to maximum 50 persons in a financial year in previous Act but in Companies Act, 2013 such number is increased upto 200 and maximum 4 issue can be offered by a company in a financial year

Use of banking channels has been made compulsory for private placement, which shall reduce the opportunities to launder money.

Private Companies was not required to make right issue under companies Act, 1956

The fact that on non-compliance of any of the provisions relating to the private placement, the offer shall by default be treated as public offer shall result into greater co-ordination between MCA and SEBI. All these changes will lead to better governance and transparency of the affairs of the companies.

What is Private Placement ?

For the 1st time in Indian legal history, the term “Private Placement” has been defined under the Companies Act 2013.

Private Placement is opposite of Public Issue . It is the sale of securities to a relatively small number of selected investors as a way of raising capital.

*Private Placement has been specifically defined to mean any offer of securities or invitation to subscribe **securities** to a select group of persons by a company other than by way of public offer through issue of a private placement offer letter.*

Securities

Securities as defined in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956

Companies Act, 2013 seeks to regulate issue of all types of securities and not just shares and debentures

Private Placement in terms of Section 42 of the Companies Act, 2013

Limit would be reckoned individually for each class of security (i.e. Equity, Debentures, Preference Shares,)

Offer in One FY

- 200 investors excluding QIB and ESOP

Conditions to be followed related to Private Placement

Special Resolution

- Prior approval of the shareholders by way of a Special Resolution in the General Meeting is a pre-condition for Private Placement for each of the Offers or Invitations .
- In case of non-convertible debentures, it shall be sufficient if the company takes prior approval of shareholders by passing a special resolution only once in a year for all the offers or invitation for such debentures during the year.
- Public Advertisement or utilizing any media or marketing channel to inform the public at large about such an offer is not allowed
- The justification for the price at which the offer or invitation is being made shall be disclosed in the explanatory statement annexed to the notice for the general meeting:

- Private Placement Offer Letter shall be in Form PAS-4.
- It shall be accompanied by an application form. Application form to be:
 - a. serially numbered
 - b. addressed specifically to the person to whom the offer is made
 - c. sent within 30 days of recording the names of such persons either in writing or in electronic mode.
- No person other than the person so addressed in the application form shall be allowed to apply.

Number Of Persons

The offer of securities or invitation to subscribe securities, shall be made to not more than 200 persons in the aggregate in a financial year excluding offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option. The limit to be reckoned individually for each kind of security. *(Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)*

The Section limits the maximum number of person but do not specify minimum number of person.

But Section 42(2), Explanation II (ii) defines private placement as "offer of securities to a select *group of persons*" which should be implied as more than one person.

Conditions to be followed related to Private Placement

The minimum investment size shall be not less than Rs.20,000 of face value of the securities. (Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)

Value

Payments for Subscription

- Payments for subscription shall be made from the bank account of the person subscribing to such securities. In case of joint holders, it shall be paid from the bank account of the person whose name appears first in the application.
- Cash - Not acceptable. All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.

Monies to be kept in separate Bank Account

All the monies received on application shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

- a) for adjustment against allotment of securities; or
- b) for the refund of monies in case the company is unable to allot securities.



Allotment of Securities

Conditions to be followed related to Private Placement

A company making an offer or invitation shall allot its securities

- **within 60 days** from the date of receipt of the application money,
- otherwise refund the same within 15 days from the date of completion of **sixty days**; and
- **if fails to repay** the application money within the said period, then refund the amount along with *interest* at the rate of **12% p.a.** from the expiry of the sixtieth day.

Complete Records of Offers

Offer to be made to only such persons whose names are recorded by the company prior to the invitation to subscribe. A complete record of such offers shall be kept by the company in Form **PAS 5** which is required to be filed **within 30 days of circulation of offer alongwith PAS 4** (offer letter) with the MCA.

Return of Allotment

The Company shall file with the MCA, a return of allotment in **PAS 3** *within 30 days* of allotment, including the complete list of all security-holders containing -

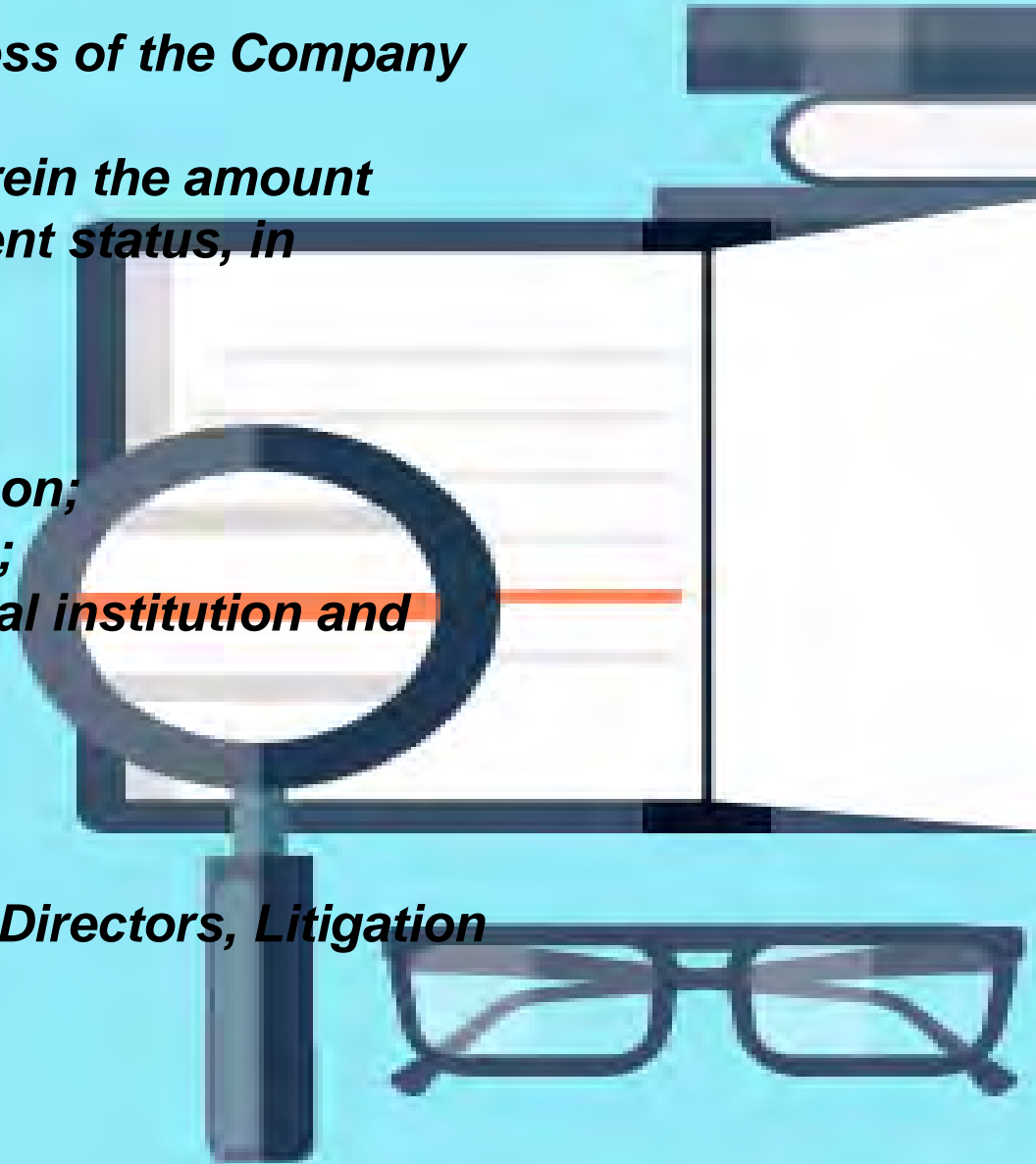
- a. the full name, address, PAN and E-mail ID of security holders;
- b. the class of security held;
- c. the date of allotment of security ;
- d. the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if the securities were issued for consideration other than cash.

Private Placement in terms of Section 42 read with Rule of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (MATTERS, RECORDS, PROVISIONS TO BE MAINTAINED)

- Maintenance of complete database of the persons to whom the offer to subscribe to the securities is proposed to be made
- Offer of Securities will be made only through personalized offer letter to such persons whose names are recorded prior to the invitation to subscribe
- Maintenance of Record of the Bank Account of the Applicants
- Minimum gap between two offers to be not less than 60 days
- No fresh offer to be made unless previous offer is completed
- Share application money to be kept in Separate Bank Account.
- * Transfer of securities is permitted

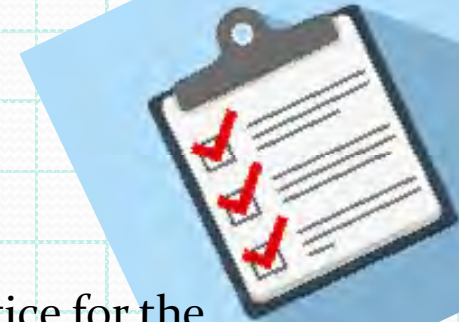
Disclosures Required under Offer Document

- **General Information about the Company**
- **Factors that directly impact the business of the Company**
- **Details of default, if any, including therein the amount involved, duration of default and present status, in repayment of –**
 - statutory dues;**
 - debentures and interest thereon;**
 - deposits and interest thereon;**
 - loan from any bank or financial institution and interest thereon.**
- **Details of Issuance of Securities**
- **Disclosures with regard to interest of Directors, Litigation etc.**
- **Financial Information of the Company**



Checklist for allotment of shares through private placement

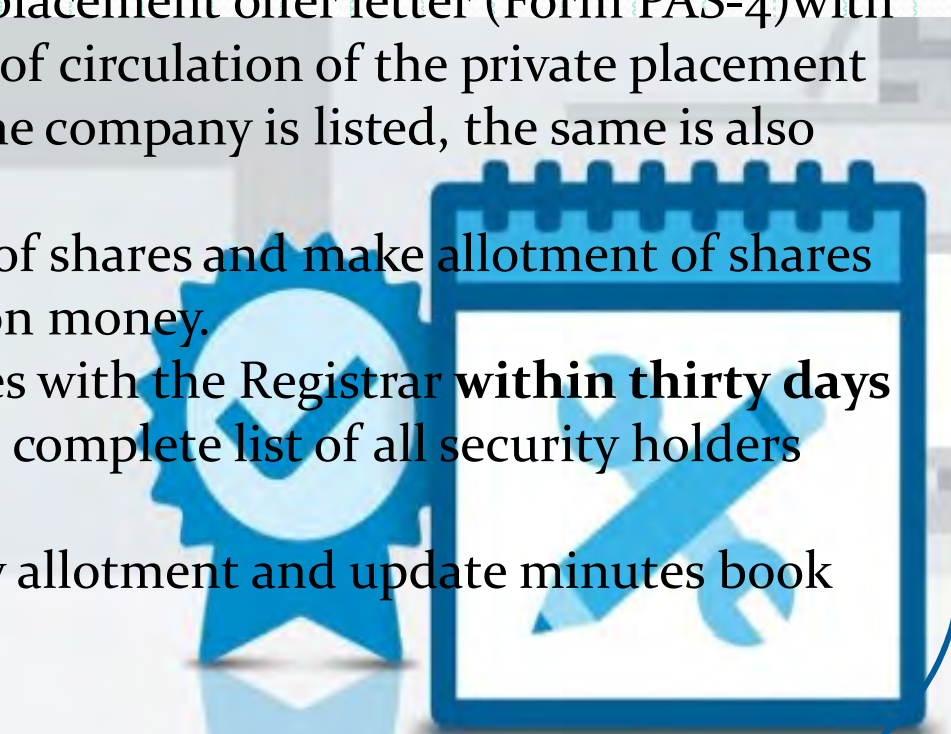
- Hold the board meeting for the following items:
 - to finalize the Offer Letter
 - to approve issue of shares through Private Placement
 - to identify persons to whom option will be given
 - to approve draft notice of General Meeting
 - Ensure that the explanatory statement annexed to the notice for the general meeting shall disclose the basis or justification for the price (including premium, if any) at which the offer or invitation is being made.
- Hold the General Meeting and pass the special resolution and approve the draft offer letter.
- If the said offer or invitation is for non-convertible debentures, it shall be sufficient if the company has passed a previous special resolution during year for all the offers or invitation for such debentures.
- File Form MGT-14 with the Registrar within 30 days of passing the resolution.
- Issue Letter of Offer to the proposed subscribers in Form PAS- 4 within 30 days of passing of resolution along with application form.
- To ensure that the offer or invitation shall not be made to not more than 200 persons in the aggregate in a financial year
- To ensure that the value of such offer or invitation per person shall be with an investment size of not less than Rs. 20,000 of face value of the securities.



Cont....



Cont...

- To ensure that all monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
 - Maintain the record of the Bank account from where such payments for subscriptions have been received.
 - Maintain the complete record of private placement offers in Form PAS-5.
 - File form PAS-5 along with the private placement offer letter (Form PAS-4) with the Registrar within a period of 30 days of circulation of the private placement offer letter in Form GNL-2 and where the company is listed, the same is also required to be filed with SEBI.
 - Conduct Board Meeting for allotment of shares and make allotment of shares within sixty days of receipt of application money.
 - File the return of allotment of securities with the Registrar **within thirty days** of allotment in Form PAS-3 along with a complete list of all security holders containing the required details.
 - Issue the Share certificates for the new allotment and update minutes book and registers.
- 

Violation of Section 42 of the Companies Act, 2013

With the enormous increase in the penalties for violation of provisions of Companies Act, 2013, it is necessary to discuss about the penalties for non-compliance or violation of the provisions of Sections in the beginning. So that the *Company Secretaries* (being the Compliance Officer) of the Company can make the management understand about the seriousness of the relevant provisions of the Companies Act, 2013.

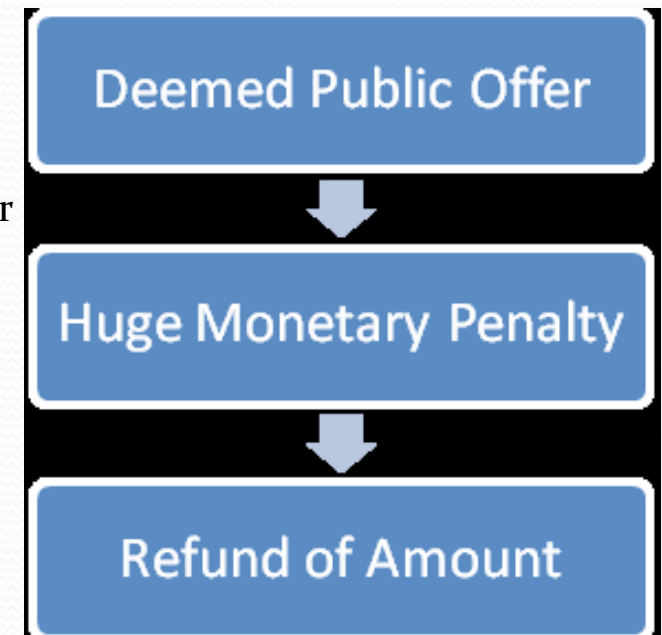
PENALTIES

1. There are two impacts of violation of Section 42:

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of the Companies Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. Two points need to be noted here:

- If a company makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than 200 persons in a financial year, whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public.

(Not Applicable to NBFCs and Housing Finance Companies, if they are complying with the regulations made by RBI or National Housing Bank respectively)



- If a company makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to not more than 200 persons in a financial year, but in contravention of any other provision of Section 42, then also the same shall be deemed to be an offer to the public.
2. Monetary penalty for contravention of the provisions of Section - 42 - The company, its promoters and directors shall be liable for a penalty which may **extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher**, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Right Issue



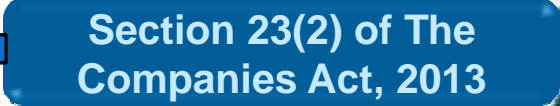
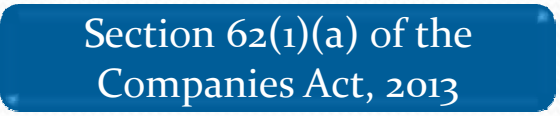
A genre of Fund Raising



REGULATORY FRAMEWORK FOR AS PER COMPANIES ACT 2013 RIGHT ISSUE

- **Chapter IV: Share Capital and Debentures**
- **Section 62: Further Issue of Share Capital**
 - *Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014*
- **Section 62(1):** If the Company decides to issue fresh shares, these should be offered to existing shareholders in proportion to existing persons who are holders of equity shares.
- 'Right Issue' means offering shares to existing members in proportion to their existing share holding. The object is, of course, to ensure equitable distribution of Shares and the proportion of voting rights is not affected by issue of Fresh shares.

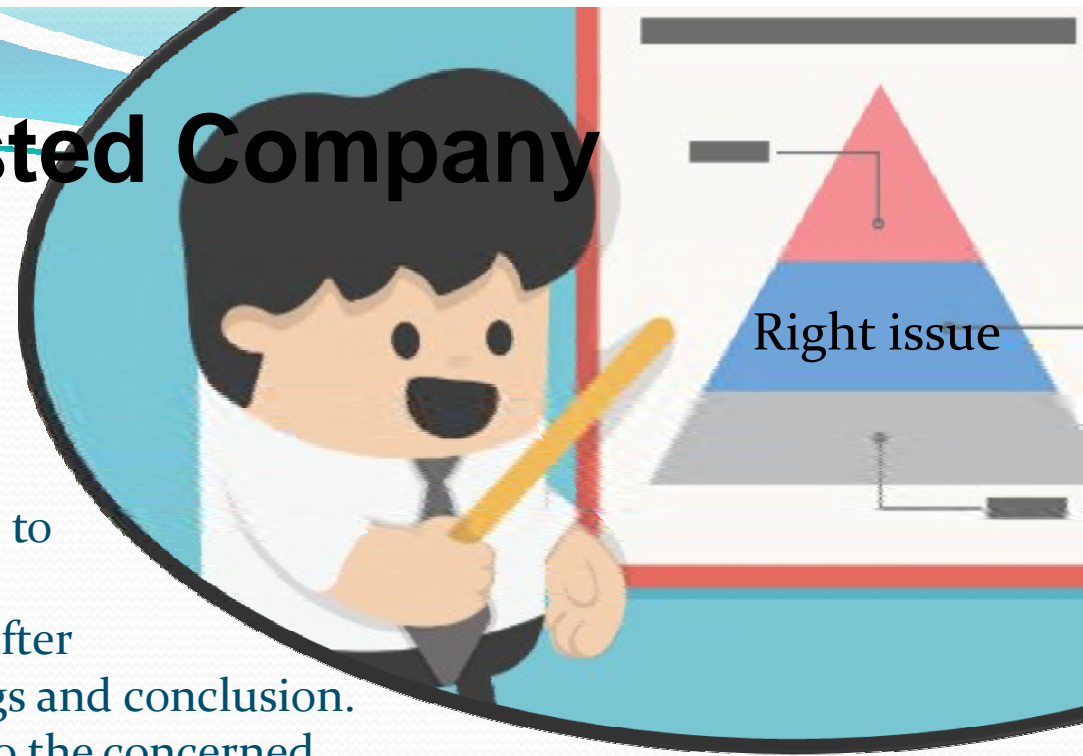
Matters Related to Right Issue

- states that issue of prospectus is not necessary in right issue whether with or without right of renouncement.  Section 23(2) of The Companies Act, 2013
- Department has also clarified vide letter *No. 8/81/56-PR dated 04.11.157* that issue of rights share is a 'domestic concern' and hence issue or registration of prospectus is not necessary.
-  Section 62(1)(a) of the Companies Act, 2013 states that company making right issue should send a letter of offer
- As per Companies Act, 2013 a Company can issue shares under right issue on Cash Consideration
- No prospectus is required for 'right issue' to existing members, even if the members have right to renounce the right to a third person, who may or may not be a member.

If a Company have raised loan earlier in Companies Act, 2013 and want to convert such loan into Capital of Company :

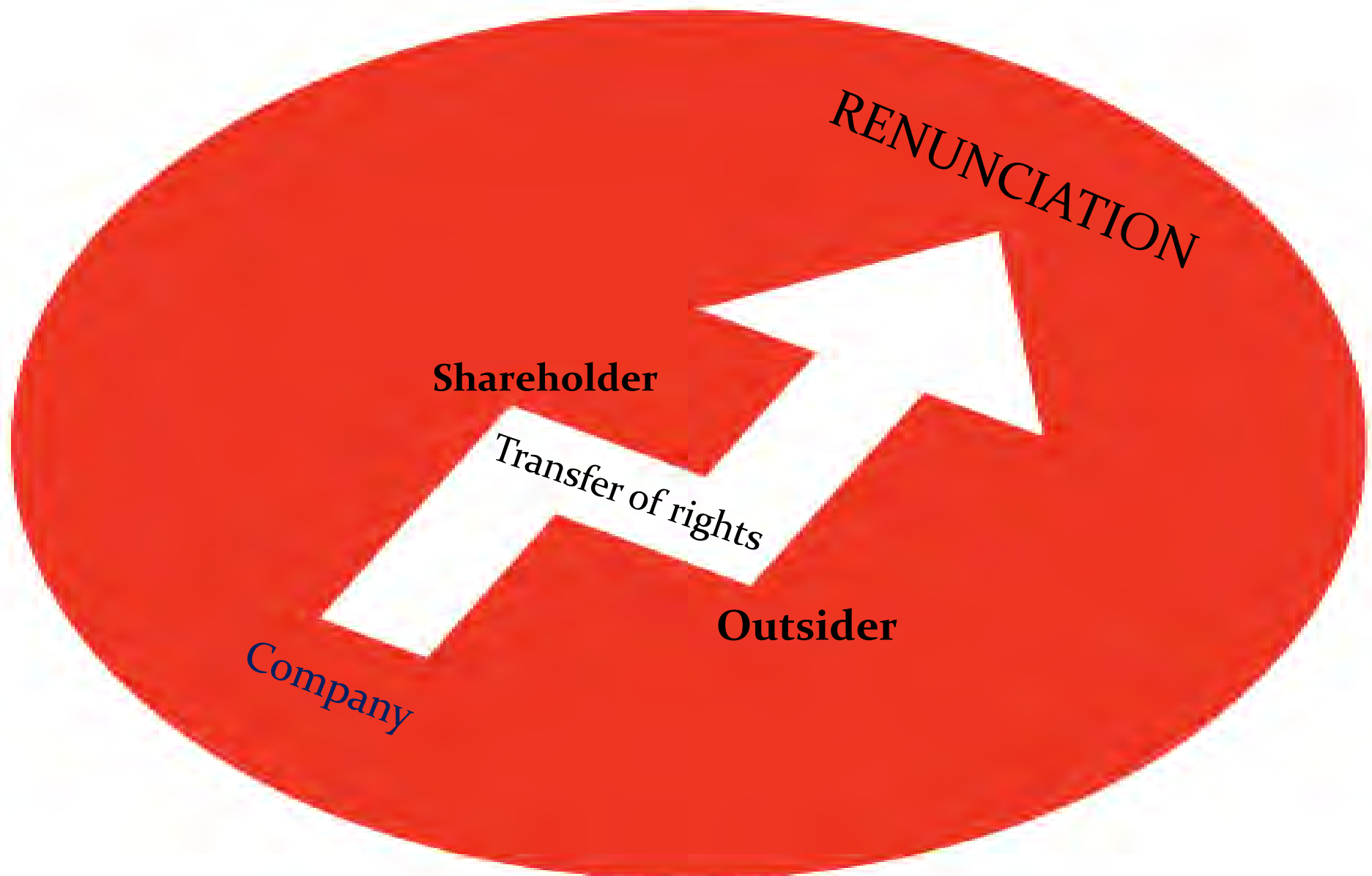
- Company can do so. if at the time of raising of money he had passed Special Resolution and if company had passed special resolution at the time of receipt of money then he can convert such loan into capital of company.

Main Highlights For Listed Company



- The issuer enters into an agreement with depository for dematerialization of securities already issued or proposed to be issued to the existing shareholders.
(and issuer also give an option to shareholders to hold security in physical for or vice-versa)
- Company also notify the stock exchange right after 15 minuts of the board meeting its proceedings and conclusion.
- Issuer need to forward 6 copies letter of offer to the concerned stock exchange prior to dispatch the same to the shareholders.
- An advertisement giving date of completion of dispatch of letter of offer has been released in at least an English Daily newspaper and in one Regional Language newspaper where company's registered office is situated.
- Company should open an ESCROW Account with the designated Merchant banker to the issue for acceptance of application in accordance with the SEBI Regulations.
- After the last date for making the application, collect the application form received and scrutinize them in all respect.
- after allotment of in Form PAS-3, Company should prepare and dispatch share certificate to the allottees within 3 months from the date of allotment.
- At last Company will make an application to all the stock Exchange for listing of Right shares allotted.

RENUNCIATION OF RIGHT OF SHARES

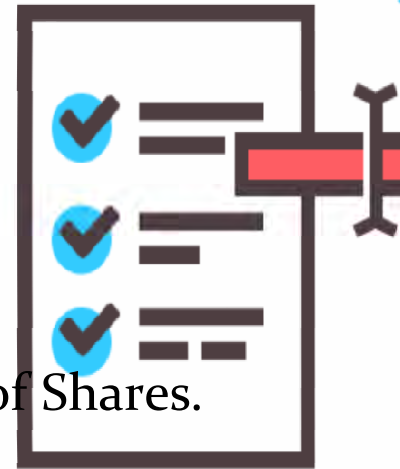


“Issue of share to outsiders under Right issue of Shares”

PROCESS OF RENUNCIATION OF RIGHT OF SHARES

PROCESS ON PART OF SHAREHOLDER:

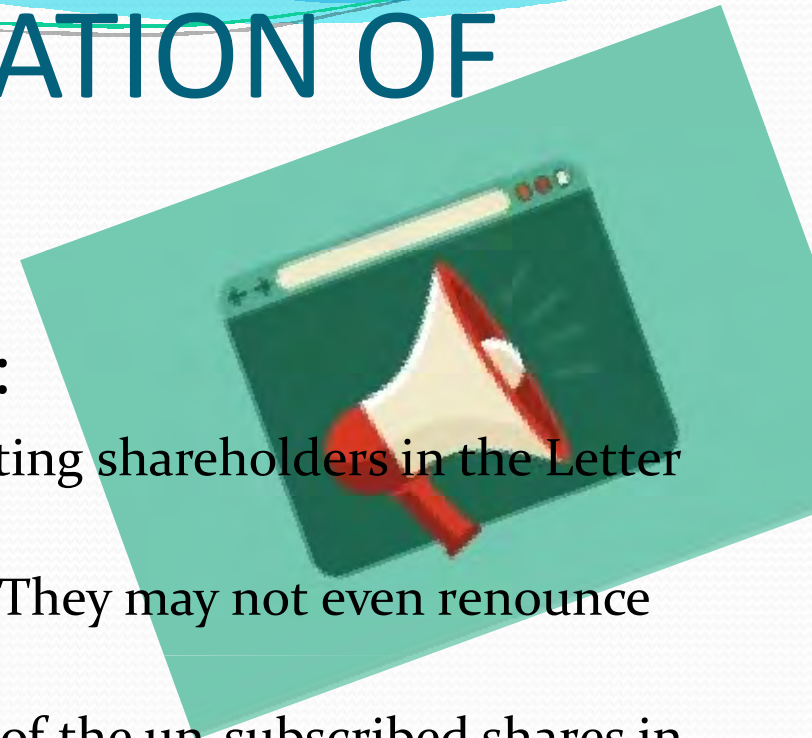
- Company will give offer to existing shareholders under Right Issue of Shares.
- If a shareholder is not interested in accepting the offer of additional shares, he can renounce the same in favour of any other person, who may not be member of the Company. {This is the way by which Company can issue shares to outsiders under Right issue of shares}
- **Giving of such right of renunciation is mandatory:** unless the Article of the company provide otherwise. The right must be specified in Letter of offer given to the Shareholder
- **Exercise Both Rights:** He can subscribe to part of his rights and renounce the balance. This is permissible.



PROCESS OF RENUNCIATION OF RIGHT OF SHARES

PROCESS ON PART OF COMPANY:

- Company will give offer of “Renunciation” to existing shareholders in the Letter of Offer.
- If Shareholder don't subscribe to the 'right issue'. They may not even renounce their right to a third person.
- In such cases, the Board of Directors can dispose of the un-subscribed shares in a manner which they think is most beneficial to the company.
- Board of Directors can allot the UN-subscribe portion of shares to any other person.
- Good Practice: Normally practice followed by good companies is to ask the Shareholders to apply for additional shares, over and above the shares allocable to them as a matter of right.
- The un-subscribed portion is allotted to the members who have applied for additional shares on an equitable basis and balance amount is refunded.



Brief Content of Right Issue

1. Select the Cutoff Date – To identify Shareholders to whom offer will be made
2. Prepare the Draft offer letter. No prescribed Format
3. Call Board Meeting. Issue notice of meeting at least 14 days before meeting
173(3) & SS-1
4. Hold the Board Meeting.
5. Present list of Shareholders to whom offer will be given
6. Pass the Board Resolution for issue of Letter of Offer sheet
7. File e-form MGT-14 within 30 days of passing of resolution
8. Issue letter of offer (offer will be open for Minimum 15 Days
Days) Through Registered Post, Speed Post and Through Email
9. Once company received money from all the Allottees. Allot Shares within 30 days
of receipt of application money.
10. Call Board Meeting Section-173(3) prepare List of Allottees **As per Schedule- B of PAS-3**
11. Pass Resolution for allotment of Securities
12. File PAS-3 with registrar. **Attachment** (List of Allottees, Board Resolution for allotment of Shares) Within 30 days of Allotment of shares.
13. Issue Share Certificates. Within 2 month of allotment of shares SH-1

