

RIGHT ISSUE OF SHARES FOR PRIVATE AND PUBLIC UNLISTED COMPANIES **UNDER COMPANIES ACT, 2013**

INTRODUCTION:

A rights issue is directly offered to all existing shareholders of the Company in proportion to their current holding. The company also set a time limit for the shareholder to buy the shares. Companies pursue Rights Issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts.

Section 62 of Companies Act, 2013 contains provisions on “further issue of capital”, and enacts the principle of pre-emptive rights of shareholders of a company to subscribe to new shares of the company.

Provisions of Section 62 of Companies Act, 2013 are mandatory for all Private companies, public companies, listed as well as unlisted companies.

RELEVANT PROVISIONS OF COMPANIES ACT-2013:

Sec 62 (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered :

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

Provided in case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of fifteen days shall not apply. (Notification dated 5th June, 2015)

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the

shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;

PROCEDURE FOR ALLOTMENT OF SHARES ON RIGHT ISSUE BASIS :

- Issue notice in writing to every Director at least seven days' before convening the Board meeting. [Sec 173 (3)]
- Convene a Board Meeting
- Pass a Board resolution for approving "Letter of offer". The offer letter shall include right of renunciation also.
- Dispatch Letter of offer to all existing shareholders through registered post or speed post or through electronic mode at least three days before the opening of the issue. In case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of three days before the opening of the issue shall not apply.
- Receive acceptance, renunciations, rejection of rights from shareholders.
- Issue notice in writing to every Director at least seven days' before convening the Board meeting. [Sec 173 (3)]
- Convene a Board Meeting
- Pass Board resolution for approving allotment and issue of shares.
- File with Registrar a return of allotment in E-Form PAS-3 within 30 days of allotment of shares.
- File E-form MGT 14 within 30 days of Issue of securities.

OTHER INFORMATION:

- There is no prescribed format for "Letter of offer" to be issued, in case of right issue of securities. Format of "Letter of offer" prescribed in Companies Act, 2013 is Pursuant to section 42 and rule 14(1) of Companies (Prospectus and Allotment of Securities) Rules, 2014 and not for Section 62.

- Letter of offer shall specify the number of shares offered and other information and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
In case of Private companies if ninety percent of the members of company give their consent in writing or in electronic mode, the time limit of fifteen days shall not apply.
- Attach with E-Form PAS-3 (i) Board Resolution for allotment and issue of share. (ii) Letter of offer (iii) List of Allottees
- List of Allottees attached with E-Form PAS-3 shall state the names, address, occupation, if any, of the shareholder and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.

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