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# PREFERENTIAL ALLOTMENT

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# WHICH SECTION GOVERNS PREFERENTIAL ALLOTMENT?

- **Section 62 along with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014 and Section 42 along with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes the procedures and provisions for preferential allotment of shares.**
- **Regulations 158 -170 deals with Preferential Issue as per **SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018** .**

## WHAT IS PREFERENTIAL ALLOTMENT?

- A preferential issue is an issue of shares or convertible securities by listed or unlisted companies to a select group of investors, but it is neither a rights issue nor a public issue.



- ❖ **Why companies do preferential allotment?**

- Companies go for preferential allotment as it is one of the fastest way to increase shares capital and bringing capital in company.
- Moreover, when a company raise capital in this way it becomes the asset of company as it leads to increase in existing shares capital. The allottee/(s) become members of the company and this fund is considered as owned fund.

# APPLICABILITY OF PREFERENTIAL ISSUE AND MEANING OF SECURITIES AS PER SECTION 62 OF COMPANIES ACT, 2013.

## ❖ **Which companies can do preferential allotment?**

- Any company can do preferential allotment, whether it's a Public or private, listed or unlisted, Section 8 Companies, etc.

## ❖ **What kind of securities are covered under preferential allotment?**

- This Section specifically covers the “shares or other securities” means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

# CONDITIONS FOR PREFERENTIAL ISSUE

- ❖ A listed issuer making a preferential issue of specified securities shall ensure that:
  - all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
  - a special resolution has been passed by its shareholders;
  - all equity shares held by the proposed allottees in the issuer are in dematerialised form;
  - the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, as amended, and any circular or notification issued by the Board thereunder;
  - the issuer has obtained the Permanent Account Numbers of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account Number for transacting in the securities market by the Board.

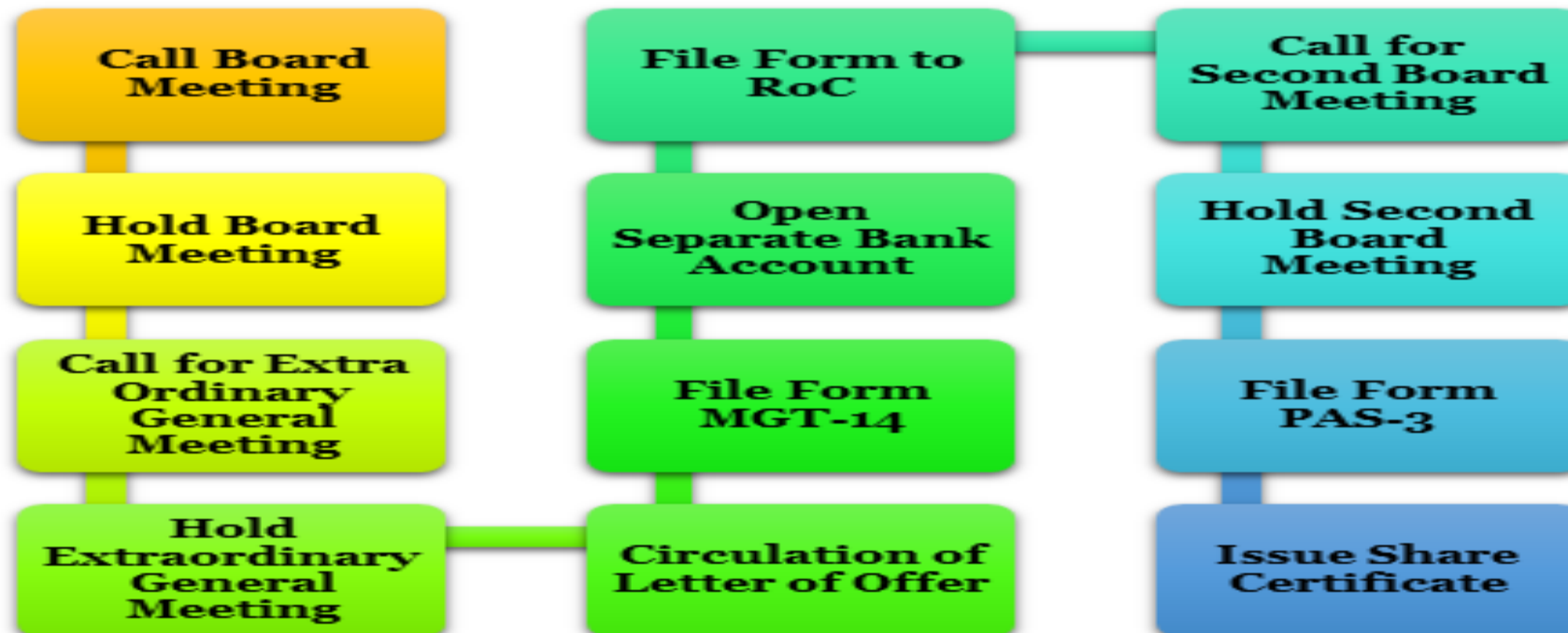
# PROCEDURE FOR ALLOTMENT OF PREFERENTIAL ISSUE OF SHARES

- Send notice to convene a Board Meeting at least seven days before the meeting.
- Convene Board Meeting and consider below given matters:-
- Consider the valuation report as received.
- Deciding the list of allottees
- Fix day, date, venue and time of extraordinary general meeting
- Finalization of draft offer letter in the form PAS-4
- Finalization of notice for extraordinary general meeting along with the explanatory statement as required in the law.
- Decide the offer period
- Open a separate bank account in a scheduled bank to receive money.

# PROCEDURE FOR ALLOTMENT OF PREFERENTIAL ISSUE OF SHARES

- Convene extraordinary general meeting and passing of resolution for allotment.
- File MGT-14 and then the private placement offer letter i.e. PAS-4 cum application shall be dispatched to the proposed allottees with the following attachments:
  - Certified true copy of the special resolution
  - Explanatory statement
- Dispatch private placement offer letter cum application to the proposed allottees within thirty days, either in writing or in electronic mode.
- Proposed Allottees shall subscribe to the shares in the private placement offer letter cum application along with the subscription money paid either by cheque or demand draft or other banking channel but not by cash whatsoever.
- The money as received shall be deposited in a separate bank account.
- Convene Board Meeting for the allotment of shares within 60 days of receipt of money.
- File PAS-3 within fifteen days of allotment of shares

# PROCEDURE IN TABULAR FORM





## PART I: ISSUERS INELIGIBLE TO MAKE A PREFERENTIAL ISSUE

- (1) Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the six months preceding the relevant date: Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of sub-regulation (2) of regulation 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to such a preferential allotment.
- **Explanation:** Where any person belonging to promoter(s) or the promoter group has sold/ transferred their equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis. Provided that the above restriction shall not apply to any sale of equity shares by any person belonging to promoter(s) of the promoter group which qualifies for inter-se transfer amongst qualifying persons under clause (a) of sub-regulation (1) of regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover Regulations), 2011 or in case of transfer of shares held by the promoters or promoter group on account of invocation of pledge by a scheduled commercial bank or public financial institution or a systemically important

## PART 2: ISSUERS INELIGIBLE TO MAKE A PREFERENTIAL ISSUE

- non- banking finance company or mutual fund or insurance company registered with the Insurance Regulatory and Development Authority.
- Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but has failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:
  - the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
  - the date of cancellation of the warrants, as the case may be.
- An issuer shall not be eligible to make a preferential issue if any of its promoters or directors is a fugitive economic offender.

# CONDITIONS FOR PREFERENTIAL ISSUE

- ❖ A listed issuer making a preferential issue of specified securities shall ensure that:
  - all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment;
  - a special resolution has been passed by its shareholders;
  - all equity shares held by the proposed allottees in the issuer are in dematerialised form;
  - the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the stock exchange where the equity shares of the issuer are listed and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), 2015, as amended, and any circular or notification issued by the Board thereunder;
  - the issuer has obtained the Permanent Account Numbers of the proposed allottees, except those allottees which may be exempt from specifying their Permanent Account Number for transacting in the securities market by the Board.

# RELEVANT DATE

- For the purpose of this Chapter, "relevant date" means:
- in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:
- Provided that in case of a preferential issue of specified securities pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank of India or a resolution
- plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016,, the date of approval of the corporate debt restructuring package or resolution plan shall be the relevant date.
- in case of a preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.
- **Explanation:** Where the relevant date falls on a weekend or a holiday, the day preceding the weekend or the holiday will be reckoned to be the relevant date.

# VALUATION REQUIRED FOR PREFERENTIAL ISSUE

## ❖ LISTED SECURITIES AS PER SEBI (ICDR)

- 1. The price of **shares** to be issued on a preferential basis by a **listed company shall not be** required to be determined by the valuation report of a registered valuer
- 2. Where the equity share or convertible securities are issued on a preferential basis by a **listed entity** for consideration **other than cash**, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent valuer, which shall be submitted to the stock exchanges where the equity shares of the issuer are listed:
- 3. If the stock exchange(s) is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may seek any information, as deemed necessary, from the issuer
- 4. Where the shares of an issuer are **not frequently traded**, the price determined by the issuer shall take into account the valuation parameters and the issuer shall submit a certificate stating that the issuer is in compliance of SEBI(ICDR)Regulations, obtained from an independent valuer to the stock exchange where the equity shares of the issuer are listed.

# TABULAR FORM OF PRICING IN CASE OF PREFERENTIAL ISSUE

164 (1)		164 (2)	164A	164B	165	166
Frequently traded shares			Pricing in case of stressed assets	Optional pricing in preferential issue	Pricing of infrequently traded shares	Adjustments in pricing - Frequently and Infrequently traded shares
Listed for more than 26 weeks	Listed for less than 26 weeks					
Higher of the Average of weekly high & low of the VWAP for 26 W/2W	Higher of <ul style="list-style-type: none"> <li>• IPO Price or Scheme Price</li> <li>• Average of weekly high &amp; low of the VWAP since listed</li> <li>• Average of weekly high &amp; low of the VWAP for 2W</li> </ul>	Higher of the Average of weekly high & low of the VWAP for 2 Weeks	Higher of the Average of weekly high & low of the VWAP for 12 W/2W  *Was available till Pref Issue till December 31, 2020	Independent Valuer's Report	price determined for a preferential issue as per Reg 164 or Reg 165, shall be subject to appropriate adjustments, if the issuer makes Rights Issues, Split of Shares, Consolidate Shares, reclassify etc.	

# COMPANIES ACT COMPLIANCES- ROC FILING

- 1. MGT- 14 within 30 days of passing Board resolution in which Preferential allotment is approved
- 2. MGT-14 within 30 days of passing Special Resolution
- 3. PAS -3 within fifteen days of allotment along with a complete list of all the allottees containing-
  - > the full name, address, permanent Account Number and E-mail ID of such security holder;
  - > the class of security held;
  - > the date of allotment of security ;
  - > the number of securities held, nominal value and amount paid on such securities; and particulars of consideration received if these securities were issued for consideration other than cash.

## RELAXATION BY SEBI TO STRESS ENTITIES DUE TO COVID 19

- SEBI introduces optional pricing in preferential issue SEBI has regulation 164B to SEBI ICDR to provide an additional option to the existing pricing framework for preferential issues of frequently traded shares. The new regulation allows the issuer to reckon the preferential issue price based on an average of 12 week price of equity shares as against the existing 26 week price. Specified securities allotted on a preferential basis using the optional pricing method determined shall be locked-in for a period of three years. The optional pricing may be availed for preferential issues made between 1 July 2020 and 31<sup>st</sup> December 2020.
- Lock-in requirements: The allotment made shall be locked-in for a period of three years from the last date of trading approval.
- Restriction on use of proceeds: The proceeds of such preferential issue shall not be used for any repayment of loans taken from promoters/ promoter group/ group companies. The proposed use of proceeds shall be disclosed in the explanatory statement sent for the purpose of the shareholder resolution.



# RELAXATION BY SEBI TO PROMOTERS DUE TO COVID 19 PANDEMIC

- Capital market regulator, Securities and Exchange Board of India (SEBI) on June 17 relaxed the preferential allotment norms till March 2021.
- SEBI has allowed promoters to increase their stake in the company by up to 10 percent through a preferential allotment, against the limit of 5 percent earlier.
- The move comes at a time when a lot of companies are in need of funds to start operations following the countrywide lockdown. It can help the companies to raise funds faster via promoters.

# RECENT PREFERENTIAL ALLOTMENTS



240 Cr.



500 Cr.



551 Cr.



101 Cr.



668 Cr.



4800 Cr.

# MEHTA & MEHTA

## COMPANY SECRETARIES & LEGAL ADVISORY

# THANK YOU

KNOWLEDGE MANAGEMENT TEAM

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