

## **ALL ABOUT RIGHT ISSUE OF SHARES UNDER COMPANIES ACT 2013**

### **SYNOPSIS:**

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### **1) Concept:**

- a. 'Right Issue' means offering shares to existing members in proportion to their existing share holding. The basic idea is to raise fresh capital.
- b. Right issue is generally availed by small companies where the power of shareholding retains with the shareholders of company.
- c. It can also be defined as the "**pre-emptive right**" that a shareholder has in the Company in preference to an outsider.
- d. Any company can go for right issue be a private company, public, listed or unlisted company.
- e. With the rights the shareholders can purchase new shares at a discount to the market price
- f. Section 62(1)(a) of Companies Act, 2013 talks about Right Issue

*"Section 62(1)(a) deals with issue of Further shares shall be offered 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;*

*(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;"*

## 2) Applicable Rules & Sections:

Certificate of shares-  
section 46 read with  
Rule 5 of Companies  
(Share Capital and  
Debentures)  
Rules,2014

Allotment of securities  
by the company -  
Section 39(4) read  
with Rule 12 of  
Companies  
(prospectus and  
Allotment of  
securities) Rules, 2014

Further issue of  
capital- Section 62  
read with Rules  
Companies (Share  
Capital and  
Ddebentures) Rules,  
2014

Resolutions &  
agreements to be  
filed- Section 117(3) &  
179(3)(C) read with  
Rule 24 of Companies  
(Management and  
administration) Rules,  
2014

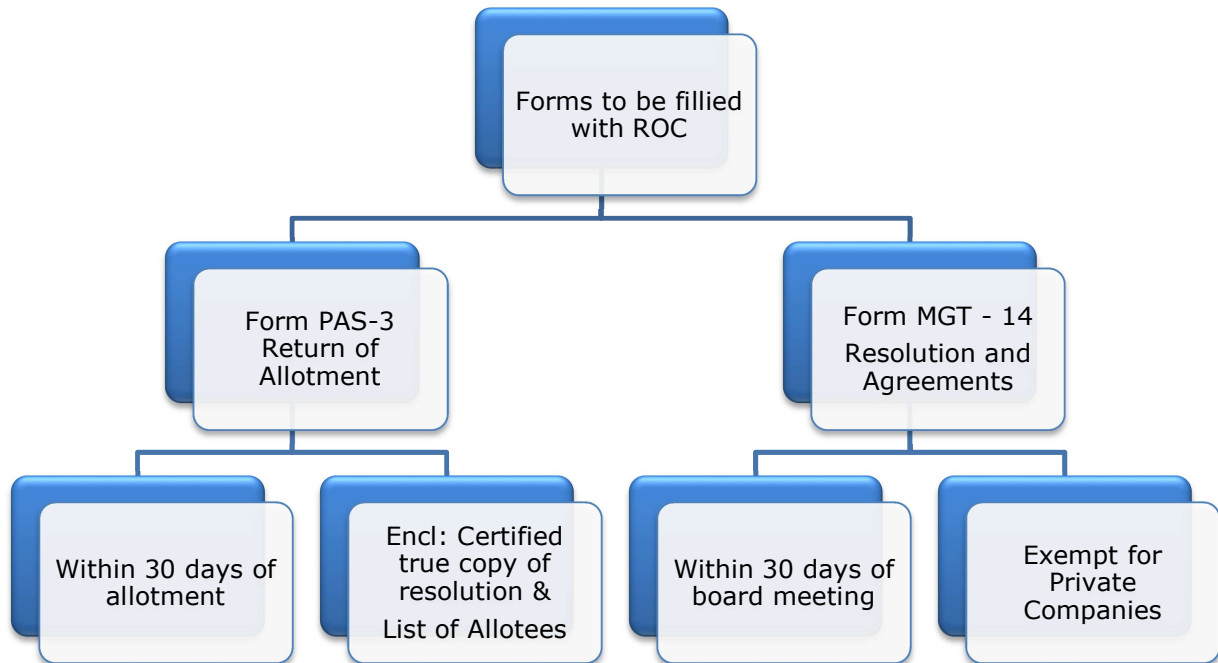
Register of Members-  
Section 88(1) read  
with Rule 3 & 5 of  
Companies  
(Management and  
administration) Rules,  
2014

## 3) Conditions for the offer to existing equity shareholders

Check the following conditions are put in the offer letter for offering shares to existing shareholders of the company

- a. Unless the articles of the company otherwise provide, the notice of offer shall contain a statement of right to renounce.
- b. Check if the offer specifies the number of shares offered and confirms that the issue is open for **at least 15 days and is not kept open for more than 30 days**
- c. Check if the clause pertaining to non acceptance of offer within a specified time, would be deemed to be denial of offer is put in the offer letter
- d. Check if the offer includes a right to renounce the shares in favour of any other person
- e. Check if the offer states that, in case the shares are declined after the expiry of the time mentioned in the notice or by an earlier intimation from the person to whom the notice was given, the board of directors may dispose of the shares in a manner not disadvantageous to the shareholders and the company.

#### 4) Forms to be filed with ROC



#### 5) Stepwise Procedure

<b>Step 1</b>	Prepare draft of the offer letter for issue of shares on right basis along with the share application form and the letter of renunciation to be attached to the offer letter.
<b>Step 2</b>	Prepare the list of existing shareholders along with details of shares, and ascertain the number of shares which can be received by them on the right issue basis.
<b>Step 3</b>	The <b>Board meeting</b> is to be held by sending at least <b>seven days</b> advance notice to all the Directors of the company.
<b>Step 4</b>	Conduct a Board meeting for passing a resolution <ul style="list-style-type: none"> <li>• to approve offer letter to issue shares on right basis</li> <li>• to fix the record date, the price of equity shares, ratio for right issue</li> <li>• to issue shares on right basis to existing shareholders</li> </ul>
<b>Step 5</b>	File <b>Form MGT-14</b> with ROC within <b>30 days</b> of Board meeting, in case of public limited companies (Not applicable to private limited companies vide Notification no. GSR 464 (E) dated 05.06.2015)

<b>Step 6</b>	<p>The <b>notice of offer</b> (there is no prescribed format) needs to be dispatched through registered or speed post or through electronic mode to all the existing shareholders <b>at least 3 days before</b> the opening of the issue.</p> <p>The letter of offer shall specify the number of shares offered and offer shall be open for a minimum period of 15 days to maximum period of 30 days. {The period of 3 days and 15 to 30 days may be shorter if 90 % shareholders have given their consent for shorter notice period in case of private limited company}.</p>
<b>Step 7</b>	Make arrangement for receipt of share Application of Money
<b>Step 8</b>	<p>After the closure of offer, prepare the list of shareholders with:</p> <ul style="list-style-type: none"> <li>• Ascertaining the list of shareholders who have renounced their shares</li> <li>• Ascertaining the list of shareholders who have not subscribed for within the time prescribed for as per the offer letter or have denied the offer</li> <li>• Ascertaining the list of shareholders who have subscribed for shares in excess of their right to subscribe for the shares</li> </ul>
<b>Step 9</b>	The allotment of shares shall be made
<b>Step 10</b>	<p>Conduct a <b>board meeting within 60 days from the date of receipt of the application money</b> (if the company fails to allot securities, has to repay the application money to the subscribers within 15 days from the date of completion of 60 days and in case the company fails to repay the application money within the aforesaid period, the company is liable to repay application money along with interest at the rate of 12% p.a. from the expiry of the 60th day.) as the allotment of the shares is to be made within such period; for</p> <ul style="list-style-type: none"> <li>• Approving the proportion in which the shares renounce and/or denied</li> <li>• Allotment of shares</li> <li>• Giving authority to issue the share certificates to the allottees within time prescribed under the act</li> <li>• Giving authority to make necessary entries in the register of members</li> </ul>
<b>Step 11</b>	<b>Issue share certificates (SH-1)</b> in accordance with the provisions of section 46 read with Rule 5 of Companies (Share Capital and Debentures) Rules, 2014

<b>Step 12</b>	File <b>e-Form PAS-3</b> along with attachments with the Registrar of Companies within <b>30 days</b> of allotment of shares
<b>Step 13</b>	Make necessary <b>entries in the register of members</b> (Form MGT-1) within <b>seven days</b> after passing of board resolution for allotment of shares. (Section 88 & 5 of Companies (Management and administration) Rules, 2014)

## 6) Penalty

If any company and directors fails to adhere with provision of right issue, there is no direct penal provision is given in the governed provision.

However as per section 450 of the Companies Act, 2013 where no specific penalty or punishment is provided in the Act, the company and every officer of the company who is in default as defined under section 2(60) or such other person shall be punishable With fine upto Rs.10,000/- and further fine upto Rs.1,000/- for every day after the first during which contravention continues

## 7) FAQ's

### a. Is there requirement to open a separate bank account for receipt of money by way of right issue?

Reply: There is no legal requirement of opening a separate bank account for receipt of money.

### b. Is valuation report required?

Reply: No, valuation report shall not be required even if the shares are issued at premium as per the provisions of the Companies Act, 2013. But if shares are offered at premium Merchant Banker valuation is mandated under Income tax Act

### c. What securities/ shares are covered in right issue?

Reply: According to section 62 of the Companies Act, 2013 read with rule 13 of The Companies (Share Capital and Debentures) Rules, 2014 "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.

**d. What if the sole shareholder is deceased, can I apply on his/her behalf?**

Reply: If the sole shareholder is deceased, such an application cannot be renounced but legal heir can apply, attaching a copy of the death certificate. Allotment in such cases will be in the deceased name and the applicant then has to approach the Registrar to the company and have this transmitted by following the transmission process.

**e. What is renunciation of issue?**

Reply: The right to subscription of shares in a company can be assigned to a third party. The transfer of such right is called renunciation of issue

**f. Can shares be issued at a premium/discount?**

Reply: The Company can issue new share issues at face value or at a premium. There are no regulations for determining the amount of premium for the issue of shares. The company cannot issue shares at a discount except for sweat equity shares.

**g. What happen if shares are not fully subscribed?**

Reply: Private Company has the authority to dispose unsubscribed shares to any person at the discretion of Board