

F.No. 12/13/2011-Legal  
Government of India  
Ministry of Corporate Affairs

5<sup>th</sup> Floor, "A" Wing, Shastri Bhawan,  
Dr. R.P. Road, New Delhi – 110001  
Dated 24.05.2011

To

All the Regional Directors,  
All the Registrar of Companies/ Official Liquidators  
All stakeholders

**Sub : New Rules in respect of unlisted public companies  
preferential allotment  
/ private placement**

Sir,

Ministry is considering to substitute Unlisted Public Companies (Preferential Allotment) Rules, 2003 by replacing it with Unlisted Public Companies (Preferential Allotment) Rules, 2011 which requires more disclosures and keeping the securities in Demat Form. A copy of draft Rules is enclosed.

You are requested to examine the draft rule and furnish your comments/recommendations to the Ministry by 20<sup>th</sup> June, 2011 by e-mail on following e-mail addresses.

[Bklal@mcas.gov.in](mailto:Bklal@mcas.gov.in)  
[Monika.gupta@mcas.gov.in](mailto:Monika.gupta@mcas.gov.in)

Yours faithfully,

  
( B.K.L. Srivastava )  
Joint Director

## **DRAFT NOTIFICATION**

GSR \_\_\_\_\_ New Delhi \_\_\_\_\_ .5.2011

In exercise of the powers conferred by sub Section (1-A) of Section 81 of the Companies Act 1956 read with Section 642 of the said Act, the Central Government hereby makes the following rules in supersession of unlisted Public companies (Preferential Allotment) Rules, 2003.

### **1. Short Title and Commencement**

- (i) These rules may be called Unlisted Public Companies (Preferential Allotment and Private Placement) Rules 2011
- (ii) They shall come into force on the date of their publication on official Gazette.

### **2. Applicability**

These rules shall be applicable to all unlisted public companies in respect of preferential issue of equity shares, fully convertible debentures, partly convertible debentures or any other financial instrument which would be convertible into or exchanged with equity shares at a later date.

### **3. Definition**

(1) "Preferential Allotment" includes issue of shares on preferential basis and or through private placement made by a company in pursuance of a resolution passed under sub-section (IA) of Section 81 of the Companies Act, 1956 and issue of shares to the promoters and their relatives either in public issue or otherwise.

(2) "Promoter means

- (a) the person who are in over-all control of the company; and
- (b) the person or persons who hold themselves as promoters.

**Explanation:** Where a promoter of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of the company.

(3) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

#### 4. **Special Resolution**

(i) No issue of shares on a preferential basis can be made by a company unless authorized by its articles of association and unless a special resolution is passed by the members in a General Meeting authorizing

the Board of Directors to issue the same. The Special resolution shall be acted upon within a period of 12 months.

(ii) The issuer company making an offer of securities shall make the disclosures in the offer documents as given in Annexure-I to this Rule.

(iii) The offer document as stated in sub-para (ii) above shall be approved by the members in General Meetings by way of special resolution.

(iv) The copy of special resolution passed in the General Meeting for issue of private placement alongwith copy of offer document shall be filed with the ROC as required under section 192(4) of the Act.

## **5. Pricing**

Where warrants are issued on a preferential basis with an option to apply for and get the shares allotted, the issuing company shall determine before hand the price of the resultant shares.

## **6. Other conditions for the issue of private placement**

(i) There should not be a gap of more than 30 days between the opening and closing of issue of private placement.

(ii) There should be a minimum gap of period of 60 days between two issues i.e., closing of one issue and opening of another issue.

(iii) For any issue of debentures, convertible debentures or any other financial instruments which would be convertible into or exchanged with equity shares at a later date under private placement which may result into cumulative amount of Rs. 5 crores or more, a company has to seek prior approval of Central Government in the prescribed e-form (as given in Annexure-II). (e-form is to be developed).

However, no approval of Central Government is required for issue of equity shares under private placement.

(iv) After every issue of security under private placement, the company shall file with the Registrar of Companies a return of allotment within 30 days of the allotment in the prescribed e-form duly verified by the practicing professional (as given in Annexure-III) (e-form is to be developed).

#### **7. Dematerialization of the Securities**

All securities issued under preferential allotment or private placement shall be kept in Dematerialized form as required under Depositories Act, 1996

#### **8. Compliance Certificate**

Every company having made private placement or preferential allotment under these rules shall file a compliance certificate by practicing Chartered Accountant/ Company Secretary/ Cost Accountant with the office of Registrar along with return of allotment which will certify that preferential allotment/ private placement made is in accordance with these rules.

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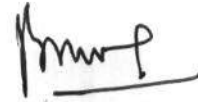
**DISCLOSURES IN THE OFFER DOUCMENT PURSUANT TO  
RULE 4(ii) OF THE RULE**

The following disclosures are mandatory to be make in addition to other disclosures, if any, company wishes to make in the offer document : --

1. Name of issuer alongwith date and place of incorporation, address of registered office, telephone number, fax number and name of contract person, website address and e-mail address.
2. Whether there has been any change in registered office address, if yes, the old address within 5 yeas may be stated.
3. Name of promotes and Directors of the issuer company alongwith complete addresses.
4. Nature number, price and amount of specified securities offer and size of the total issue.
5. Aggregate amount proposed to be raised through all the stages of offers made through offer documents.
6. Date of the opening of offer.
7. Date of closing of issue, in no case there should be a gap of more than 30 days from the opening of such issue.
8. Date of earliest closing of issue, if any.
9. The object of the issue and brief detail of project, if any for which issue is made.
10. Details of statutory clearances needed for the project and the status of such clearances.

11. Details of outstanding loans and advances.
12. Names of loss making group companies.
13. Any investment in debt instruments which are unsecured or which carry interest rate lower than the market rate.
14. Negative cash flow, if any.
15. Amount of contested tax demands.
16. Authorized, issued, subscribed and paid up share capital, alongwith number of securities, description and aggregate nominal value.
17. Size of the present offer and proposed contribution of promoters, if any.
18. Paid up capital (i) after the offer (ii) After conversion of convertible instrument (if applicable).
19. Share premium account (before and after issue)
20. Disclosure to the effect that all securities offered through the issue shall be made fully paid up or may be forfeited for non payment of calls within 12 months from the date of allotment.
21. If the offer relates to issue of convertible/non convertible debentures or other financial instrument, the complete details of nature of security, interest rates and terms of repayment etc may be furnished.
22. If offer is for equity shares, whether any dividends are assured.
23. Brief details of the project for which issue is made and project appraisal conducted whether any weakness has been pointed out in appraisal report.
24. Schedule for implementation of project for which issue is made.
25. Earning per share and diluted earning per share pre issue for the last 03 years.
26. Average return on net worth in last 03 years.
27. Net assets value per share based on the last Balance Sheet.

28. Net assets value per share after offer.
29. Outstanding litigations involving issuer which if decided shall have material impact on the financial health of the company.
30. Class or class of person to whom allotment is proposed to be made.
31. Intention of promoters/ Directors/ Key management persons to subscribe to offer.
32. Shareholder pattern of promoters and other class of shares before and after the offer.

  
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