

# *An Analysis on the "Private Placement"*

**navneet k. arora & co.**  
COMPANY SECRETARIES

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# Proprietor 's Profile at a Glance

## Navneet K. Arora & Co., Company Secretaries

### BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3<sup>rd</sup> March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21<sup>st</sup> July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20<sup>th</sup> November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



### EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

### PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

# *An Overview of Private Placement*

- ❑ Private Placement is a way of raising capital of the Company by way of issuing securities to a relatively small number of selected investors. Investors involved in private placements are usually large banks, mutual funds, insurance companies and pension funds.
- ❑ Since a private placement is offered to a few, selected individuals, the placement does not have to be registered with the Securities and Exchange Commission. In many cases, detailed financial information is not disclosed and the need for a prospectus is waived.
- ❑ **Section 23 & 42 of the Companies Act, 2013 and Companies (Prospectus & Allotment of Securities) Rules, 2014 specify the law and procedure regarding offer or invitation for subscription of securities on private placement.**

# *Law related to Private Placement*

- ❑ **Extract of the relevant provisions prescribed in Section 23 & 42 of the Companies Act, 2013 as under:-**
  - As per Section 23 of Companies Act 2013, A private Company may issue securities –
    - (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or
    - (b) through private placement by complying with the provisions of Section 42 of the Act.
  - Further Section 42 of the Companies Act 2013 provides that an offer or invitation of securities through private placement may be made in the form and manner prescribed subject to compliance with the following conditions prescribed:
    - (a) the offer or invitation in a financial year, shall be made to such number of persons, excluding qualified institutional buyers, and on such conditions (including the maximum amount to be raised) as may be prescribed;
    - (b) the value of such offer or invitation shall be with an investment size of such amount as may be prescribed; and
    - (c) the company shall not issue any prospectus for such offer or invitation and such offer or invitation shall be made through a private placement offer letter.
  - For the purposes of Section 42(1), a company may make an offer or invitation to subscribe to securities through issue of a private placement offer letter in Form PAS-4.

# *Law Related to Private Placement*

- A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with section 42(7). It is further given that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.
- A company shall not make a private placement of its securities unless -
  - a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed
  - b) It is further provided that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year. such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year, provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of section 62 (1)(b) shall not be considered while calculating the limit of two hundred persons

# *Private Placement as per Rules*

- ❑ **Relevant Rules in the Companies (Prospectus 7 Allotment of Securities) Rules, 2014 as under :-**
  - The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities.
  - The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received, provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
  - The company shall maintain a complete record of private placement offers in Form PAS-5, provided that a copy of such record along with the private placement offer letter in Form PAS-4 shall be filed with the Registrar with fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and where the company is listed, with the Securities and Exchange Board within a period of thirty days of circulation of the private placement offer letter.
  - A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form PAS-3 and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing the prescribed details
  - The provisions of clauses (b) and (c) of sub-rule (2) shall not be applicable to -
    - (a) non-banking financial companies which are registered with the Reserve Bank of India under Reserve Bank of India Act, 1934; and
    - (b) housing finance companies which are registered with the National Housing Bank under National Housing Bank Act, 1987,

# *Private Placement as per Rules*

- If they are complying with regulations made by Reserve Bank of India or National Housing Bank in respect of offer or invitation to be issued on private placement basis, provided that such companies shall comply with sub-clauses (b) and (c) of sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations. A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with section 42(7). It is further given that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.
- A company shall not make a private placement of its securities unless -
  - a) the proposed offer of securities or invitation to subscribe securities has been previously approved by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations provided that in the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made shall be disclosed. It is further provided that in case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year. such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year, provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of section 62 (1)(b) shall not be considered while calculating the limit of two hundred persons

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*Thanking you*

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