

Comparison and Mapping of Rule 14 of PAS Rules dealing with Private Placement:

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| Substituted Rule 14 w.e.f August 7, 2018 ¹ | Erstwhile Rule 14 | Remarks |
|---|--|---|
| Rule 14 (1) | Rule 14 (2) (a) | No change. |
| Proviso to Rule 14 (1) | First proviso of Rule 14 (2) (a) and Para 2 of Form PAS-4 dealing with particulars of offer. | Details of Particulars of offer to be given in PAS -4 shall also be provided in the explanatory statement. |
| Second proviso to Rule 14 (1) | No corresponding provision | <p>Second proviso provides as under:</p> <p><i>Provided further that this sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub-section (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate:</i></p> <p>This is administrative relief. The companies intending to raise monies by issue of NCDs by way of private placement need not seek approval of shareholders by way of separate resolution so long it is within the borrowing limits passed under Section 180(1) (c).</p> |
| Third proviso | Second proviso to Rule 14 (2) (a) | <p>In view of second proviso inserted, third proviso has been amended with modification in relation to reference to limit under Section 180.</p> <p><i>“Provided also that in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit as specified in clause (c) of sub-section (1) of section 180, it shall be sufficient if the company passes a previous special</i></p> |

¹ http://www.mca.gov.in/Ministry/pdf/RuleProspectusSecurities07_08082018.pdf

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| | | <p><i>resolution only once in a year for all the offers or invitations for such debentures during the year."</i></p> <p>The bold part has been inserted to clarify when specific approval of shareholders is required to be taken.</p> <p>Although, it seems a vague insertion companies will opt for obtaining approval under Section 180 instead of separate approvals under Section 42.</p> |
| Rule 14 (2) | Rule 14 (2) (b), proviso and Explanation (i) | No change |
| Rule 14 (3) | Rule 14 (1) (a), Rule 14 (1) (b) and proviso. | No change |
| Rule 14 (4) | Rule 14 (3). | <p>Proviso in erstwhile Rule 14 (3) mandating filing of offer letter and record of private placement with Registrar stands deleted.</p> <p>Accordingly, GNL-2 no longer required to be filed.</p> |
| Rule 14 (5) along with first proviso | Rule 14 (2) (d) | No change |
| Second proviso | No corresponding provision | <p>Second proviso provides as under:</p> <p><i>Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.</i></p> <p>It is a clarificatory insertion that requirement of receiving monies from the bank account of persons subscribing to the issue shall not apply in case of issue of shares for consideration other than cash.</p> |
| Rule 14 (6) | Rule 14 (4) | <p>Timeline for filing return of allotment with registrar stands reduced from 30 days to 15 days in line with requirement stipulated under Section 42 (8). [Amended vide Companies (Amendment) Act, 2017].</p> |
| Rule 14 (7) | Rule 14 (5) | <p>Reference to clause (c) made under erstwhile Rule 14 (5) has been deleted.</p> <p>Clause (c) provided as under:</p> |

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| | | <i>(c) 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.</i> |
| 14 (8) | No corresponding provision | <p>As the requirement to file GNL-2 with Registrar has been done away with, it has been mandated to file the special resolution passed under Section 42 and Board resolution passed for issue of securities under Section 179 (3) (c) in relation to said private placement issuance shall be filed with the Registrar in Form MGT-14 before issuing offer cum application letter.</p> <p>Private companies, exempted from the requirement to file eform MGT-14 under Section 117 (3) (g) for resolutions passed under Section 179 vide Notification dated 5th June, 2015.</p> <p>Such private companies will also be required to file MGT-14 for board resolution passed for issue of securities under private placement.</p> |

Revisions made in PAS -4 under amended Rules

The following are the changes brought by the new Form PAS-4. The requirements highlighted are also to be disclosed in the explanatory statement that is to be annexed to the notice of the general meeting seeking shareholder's approval under Rule 13 of the Companies (Share Capital and Debenture) Rules, 2014.

1. Heading says "Private Placement Offer **Cum Application Letter**".
2. A new requirement is to be given under the head of **General Information** as follows
 - (ix) Any Default in Annual filing of the company under the Companies Act, 2013 or the rules made thereunder.
3. The following new requirements are to be given under the head of **Particulars of Offer** as follows:
 - (i) Financial position of the company for last 3 financial years.
 - (iv) **the total number of shares or other securities to be issued.**
 - (vi) **basis on which the price has been arrived at along with report of the registered valuer;**

(vii) Relevant date with reference to which the price has been arrived at

[Relevant Date means a date atleast thirty days prior to the date on which the general meeting of the company is scheduled to be held.

(viii) The class or classes of persons to whom the allotment is proposed to be made;

(ix) Intention of promoters, directors or key managerial personnel to subscribe to the offer (applicable in case they intend to subscribe to the offer) [not required in case of issue of non-convertible debentures;

(x) The proposed time within which the allotment shall be completed;

(xi) The names of the proposed allottees and the percentage of post private placement capital that may be held by them [not required in case of issue of non- convertible debentures];

(xii) The change in control, if any, in the company that would occur consequent to the private placement.

(xiii) the number of persons to whom allotment on preferential basis /private placement/ rights issue has already been made during the year, in terms of number of securities as well as price;

(xiv) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer;

(xxi) The details of significant and material orders passed by the Regulators, Courts and Tribunals impacting the going concern status of the company and its future operations;

4. The new Form also puts down a table to show the pre-issue and post-issue holding of the various groups of entities like promoters and non- promoters and their sub-categories.

5. The new Form lays down the modes of payment for subscription as following:

- Cheque
- Demand Draft
- Other Banking channels.

6. Amendments have been generally in the Form to give effect to the Form being made an private placement offer cum application letter.

7. A new Part B has been added to the Form to be filled in by the Applicant with regard to his personal details (details similar to that to be recorded in PAS-5).