



Private Placement of Securities

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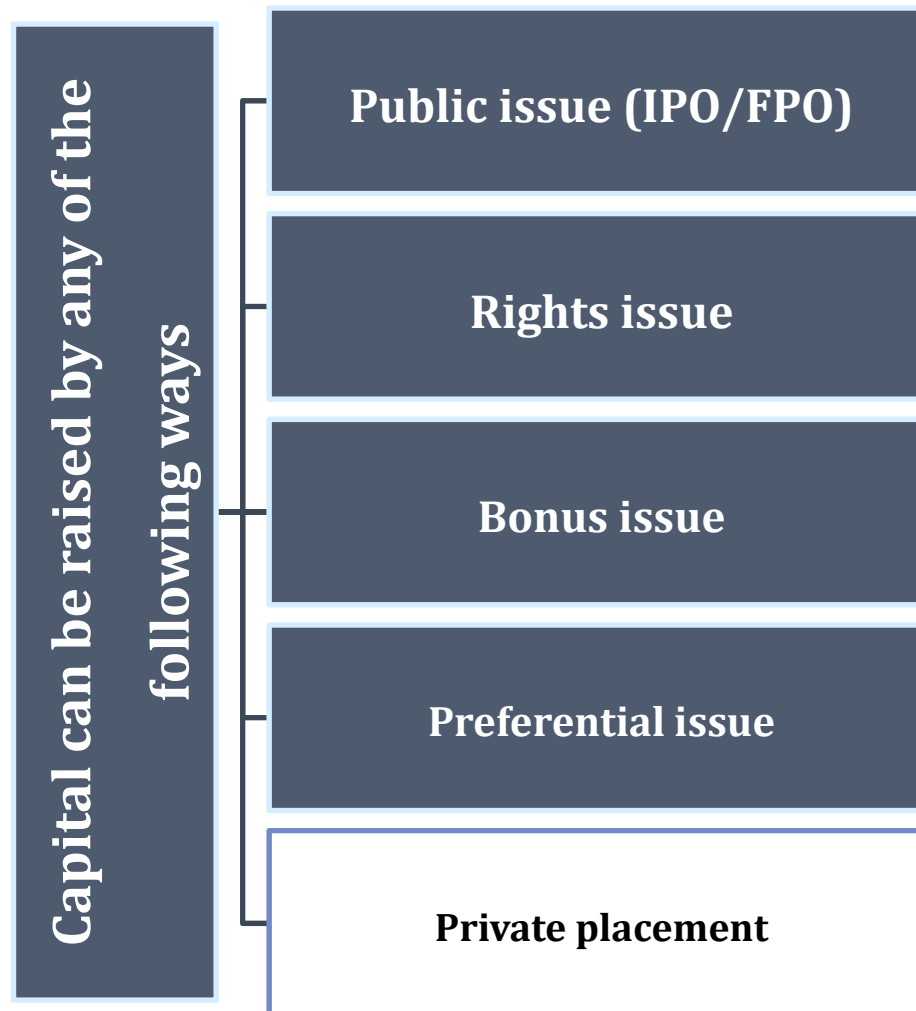
Executive, Vinod Kothari & Company



Overview of the presentation

1. Private Placement – Meaning and provisions of law
2. Securities of which private placement can be done
3. Understanding PPOAL
4. Procedure of private placement
5. Private placement in case of NBFCs and HFCs
6. Electronic Book Mechanism for issue of securities
7. Penal provisions for non-compliance with the required provisions of law

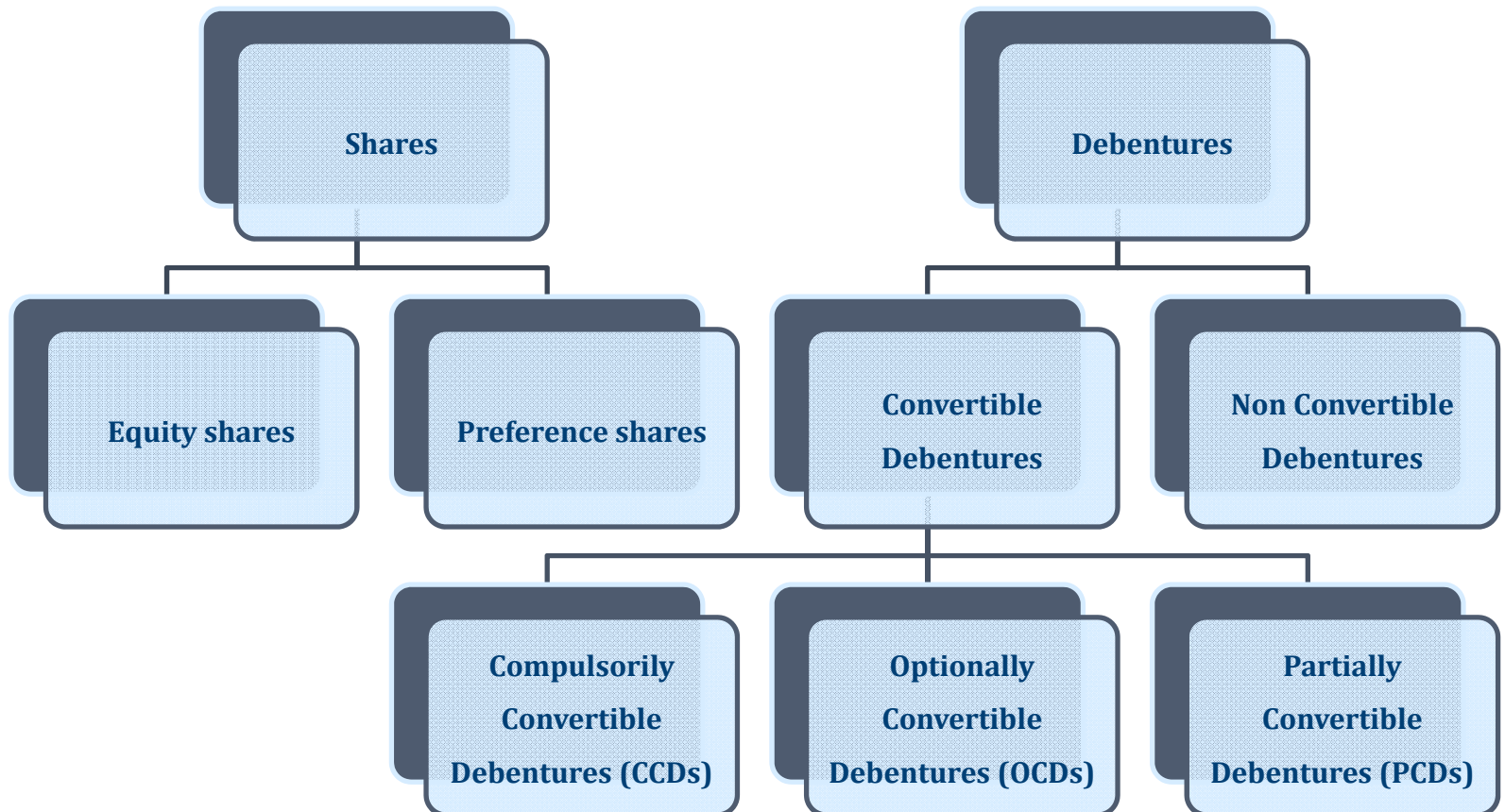
Methods to raise capital



1. Private placement – Meaning and provisions of law

- **Section 42** of the Companies Act 2013 (Act, 2013) read with **Rule 14** of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (Rules)
 - Section 71 of the Act, 2013 in case of private placement of debentures and
 - Section 62 of the Act, 2013 in case of private placement of convertible debentures
 - Section 180(1)(c) of the Act, 2013 w.r.t limits upto which NCDs can be raised
- Separate guidelines framed by RBI and NHB for private placement by NBFCs and HFCs respectively
- **Meaning** - "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through Private Placement Offer-cum-Application Letter (PPOAL)
 - offer shall not be made to more than **200 in aggregate in a financial year**
 - **QIBs and employees** to whom ESOP is given not included
- **Deemed Public Offer:** If offer or allotment is made to more than 200 persons in a F.Y. it shall be deemed to be public offer.

2. Securities of which private placement can be done



3. Understanding PPOAL

- The PPOAL shall be in Form PAS-4
 - The PPOAL shall not carry any right of renunciation
 - It shall be serially numbered and **addressed specifically to the person to whom offer is made.**
 - The form was last amended on August 7, 2018
 - **It prescribes the disclosures that are required to be made by the company doing private placement**
 - Some of the additional disclosures that are now required to be made include:
 - Any default in annual filing under Act, 2013
 - Number of share/securities to be issued
 - Basis on which price has been arrived at along with report of the registered valuer
 - Change of control, if any, consequent to private placement
 - Mode of payment for subscription
 - Personal details of the applicant to be filled in the form

4. Procedure of private placement

1

• Passing of Board resolution u/s 179(3) of the Act, 2013

2

• Filing of eform MGT-14 with the registrar

3

• Calling a general meeting and passing a Special Resolution (SR) – in case of NCDs separate SR not required if the issue is within limits prescribed u/s 180(1)(c)

4

• Sending PPOAL in from PAS-4 within 30 days of recording names

5

• Opening of separate bank account in a scheduled bank where monies received on application shall be kept

6

• The identified person shall make subscription either by cheque or demand draft or other banking channel, **but not by cash**

7

• Allotment of securities to be made within 60 days of receipt of allotment money

8

• File form PAS-3 within 15 days of allotment (money cannot be utilised unless return in the said form is filed)

9

• Issue share certificate within 2 months from the date of allotment

10

• Make entry in the register of members

5. Private placement in case of NBFCs and HFCs (1/5)

Exemptions from the calculations of 200 persons is provided to NBFCs registered with RBI and HFCs registered with NHB if they are complying with the regulations made by them in this behalf

- At present the regulations prescribed for NBFCs and HFCs are as under
 - Guidelines on Private Placement of NCDs (maturity more than 1 year) by NBFCs
 - Housing Finance Companies issuance of Non-Convertible Debentures on private placement basis (NHB) Directions, 2014

5. Private placement in case of NBFCs and HFCs (2/5)

In case of NBFCs

The provisions of Companies Act, 2013 and Rules issued thereunder shall be applicable wherever not contradictory.

Maximum subscription of less than Rs. 1 crore

Minimum subscription per investor shall be Rs. 20,000

Limit of 200 subscribers for every F.Y.


Subscription must be fully secured

Minimum subscription of Rs. 1 crore and above per investor

Minimum subscription per investor shall be Rs. 20,000

No such limit

The option to create security in favour of subscribers will be with the issuers



5. Private placement in case of NBFCs and HFCs (3/5)

- An NBFC (excluding CIC) shall issue debentures only for deployment of funds on its own balance sheet.
- An NBFC shall not extend loans against the security of its own debentures.
- Tax exempt bonds offered by NBFCs are exempted from the applicability of the circular.
- For NCDs of maturity upto one year, guidelines on Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010, dated June 23, 2010, shall be applicable.

5. Private placement in case of NBFCs and HFCs (4/5)

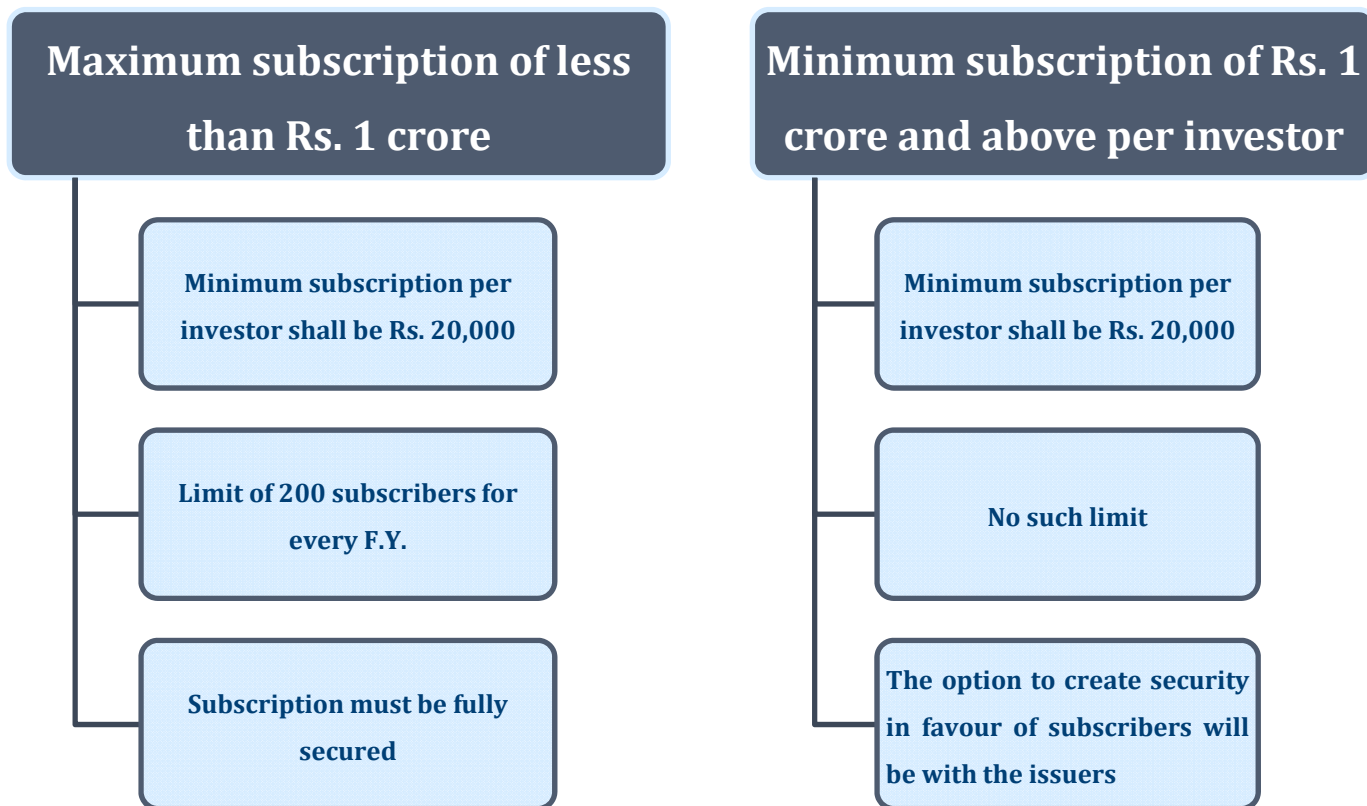
In case of HFCs

- The provisions of Companies Act, 2013 and Rules issued thereunder shall be applicable
- An HFC shall be eligible to issue NCDs if it has the **net owned fund of 10 crores**
- An eligible HFC intending to issue NCDs shall obtain **credit rating**
- The HFC shall ensure at the time of issuance of NCDs that the rating so obtained is current and has not fallen due for review.
- **Maturity:**
 - NCDs shall not be issued for maturities of **less than 12 months** from the date of issue.
 - The tenor of the NCDs shall not exceed the validity period of the credit rating of the instrument, if any
- Certificate from the auditors of the HFC to the investors that all the eligibility conditions are met
- Every HFC issuing NCDs shall appoint a Debenture Trustee for each issue

5. Private placement in case of NBFCs and HFCs (5/5)

The aggregate amount of NCDs issued by a HFC shall be lower of the two

1. within such limit as may be approved by the Board of Directors of the HFC or
2. the quantum indicated by the CRA for the rating granted, whichever is lower





6. Electronic Book Mechanism (1/2)

- SEBI circular dated January 5, 2018 which became effective from April 1, 2018
- Securities eligible for issuance on EBP platform
 - All private placement of debt securities and NCRPS.
 - Limits prescribed in relation to applicability
 - Single issue- 200 cr or more (including green shoe option)
 - Shelf issue- multiple tranches, cumulatively amounts to 200 cr or more in a F.Y.
 - Subsequent issue- aggregate of all previous issues = 200 cr or more in a F.Y.



6. Electronic Book Mechanism (2/2)

- EBM can also be opted for private placement of
 - Debt securities as per ILDM Regulations;
 - Commercial paper;
 - Certificate of deposits.
- Private placement memorandum (PPM)/ Information Memorandum (IM)
 - To be issued atleast 2 working days prior to start of issue opening date
 - Following to be disclosed in PPM/IM
 - Details of size of issue (incl. green shoe option)
 - Bid opening and closing date
 - Minimum Bid Lot

7. Penal provisions for non-compliance with the required provisions of law

- If a company **fails to file return of allotment in form PAS-3:**
 - The company, its promoters and directors shall be liable to a penalty for each default of Rs. 1000 for each day during which such default continues upto maximum of Rs. 25 lakh
- If a company makes an offer or accepts monies in **contravention of this section:**
 - the company, its promoters and directors shall be liable for a penalty of the lower of the following:
 1. the amount raised through the private placement or
 2. two crore rupees

AND

the company shall also refund all monies with interest at the rate of 12% to subscribers within a period of thirty days of the order imposing the penalty.



Thank You