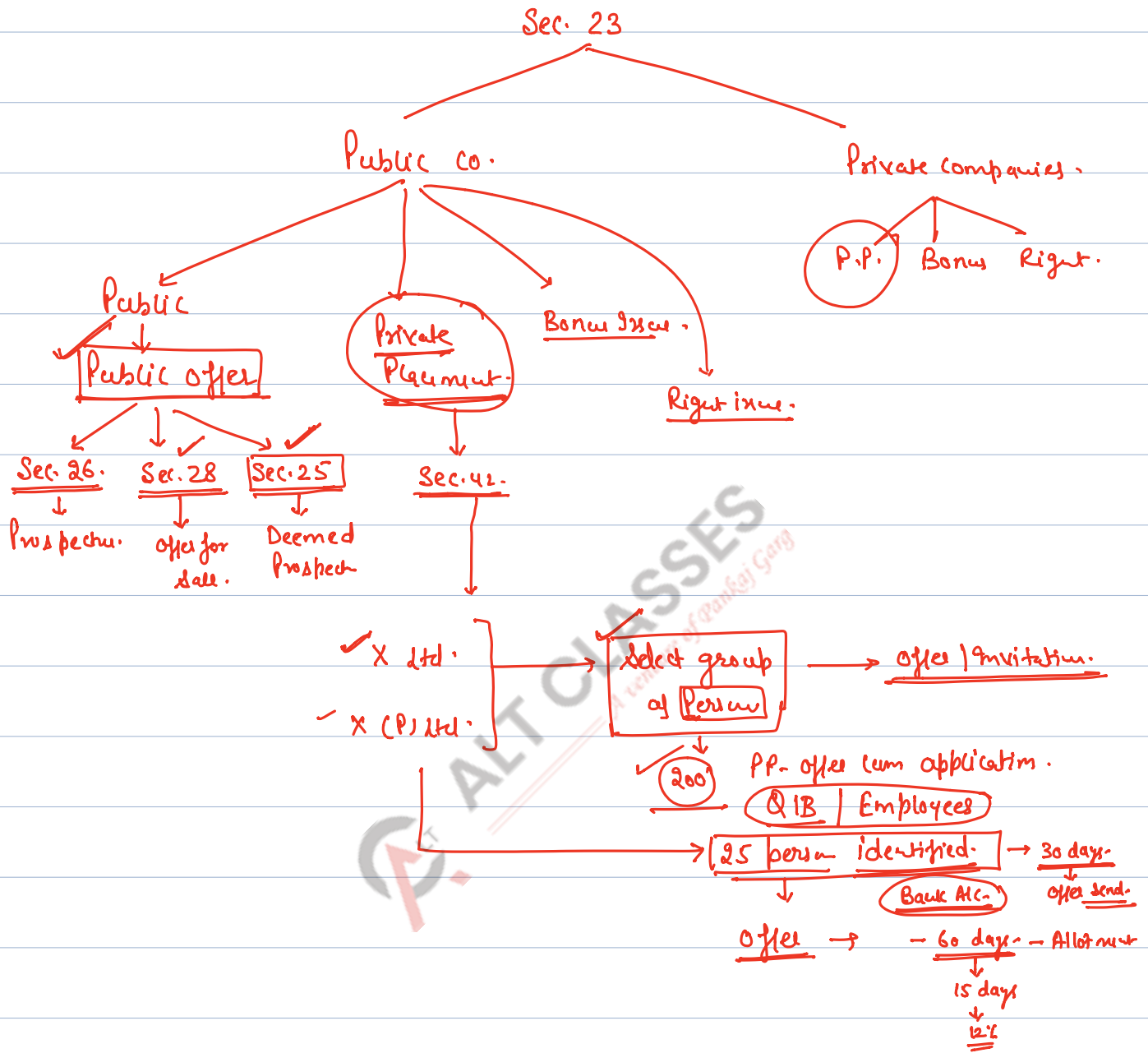


VII. Private Placement: Sec. 42 of Companies Act, 2013 and Rule 14 of Companies (PA) Rules, 2014



Meaning of Private Placement: Any offer or invitation to subscribe securities

↓

to a select group of persons (identified persons)

↓

through issue of a Private Placement offer cum application which satisfies the conditions specified in Sec. 42.

## Conditions for Private Placement: [Sec. 42 read with Rule 14]

(i) Special Resolution: Proposal for private placement has been approved by the shareholders by a Special Resolution.

Note: Notice for special resolution shall provide the details as prescribed under Rule 14.

Imp:

(ii) No. of Person:

- Private placement offer shall be made to not more than 200 persons in aggregate in a financial year.
- Offer made to QIB and Employees under ESOP shall not be considered in limit of 200 person.
- Limit of 200 person would be considered individually for each kind of security. (Equity, preference, deb<sup>n</sup>)

Note: Offer made to > 200 person will be deemed to be a public offer.

Example:

(i) X Ltd. offers its equity shares to a group of 205 persons, out of which 2 are QIB and 5 are employees to whom shares are offered under ESOP. Determine the no. of person for the purpose of limit u/s 42. ✓

(a) 205 (b) 203 (c) 200 (d) 198

(ii) X Ltd. makes a private placement offer to 50 person to subscribe for its Equity shares. On allotment of these shares, Company offers its deb<sup>n</sup> under private placement offer to 160 person. Is it a valid offer? Valid

### (iii) Manner of Issuing Private placement offer:

- Private placement offer cum application shall be in form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent within 30 days of recording of name of such person.
- Private Placement Offer shall not carry right of renunciation (i.e. Offer can be accepted only by the person to whom the offer was made)

### (iv) Payment of amount:

- Payment shall be from bank account of the person subscribing the securities.
- Company shall keep the record of bank A/c from where payment for subscription has been received.
- In case of Joint holders, amount shall be paid from the bank account of the person whose name appears first in the application.

Imp.

### (v) Limit on fresh offer:

- No fresh offer u/s 42 shall be made unless the earlier 'allotment have been completed or offer has been 'withdrawn or 'abandoned.
- Company may, at any time, make more than one issue of securities subject to maximum no. of identified persons.

Example: Determine the validity of the following private placement (PP) offers by X Ltd. during FY 2021-22:

- (i) On 10.04.2021, PP offer for equity shares made to 70 persons. - Valid provided no pending PP allotment / offer
- (ii) On 15.07.2021, PP offer for deb<sup>n</sup> made to 105 persons. - Valid provided no pending PP allotment / offer
- (iii) On 30.10.2021, PP offer for P. shares made to 90 persons. - Valid provided no pending PP allotment / offer
- (iv) On 10.01.2021, PP offer for equity shares made to 180 persons (including 15 employees) - deemed to be a public offer
- (v) On 15.02.2021, PP offer for P. shares made to 105 persons - Valid (provided no pending PP offer)
- (vi) On 05.03.2021 PP offer for deb<sup>n</sup> made to 20 persons. [ allotment of PP offer dated 15.02.2021 not yet completed ] - Invalid

### (vi) Allotment:

- Company shall allot securities within 60 days of receipt of application money.
- If not allotted, company shall repay application money within 15 days from expiry of 60 days.
- If not repaid, company shall be liable to repay the money with interest @ 12% p.a. from expiry of 60th day.

## (vii) Use of application money:

- Money recd. on application shall be kept in a scheduled bank A/c.

- Money shall be utilised for

(a) adjustment against  
allotment of securities

or (b) Repayment

(if company is unable  
to allot the securities)

(viii) Public Advt.: not permitted

(ix) Return of allotment:

- to be filed with the ROC

- in form No PAS-3

- within 15 days from the date of allotment

- Return shall be filed along with a complete list of allottees

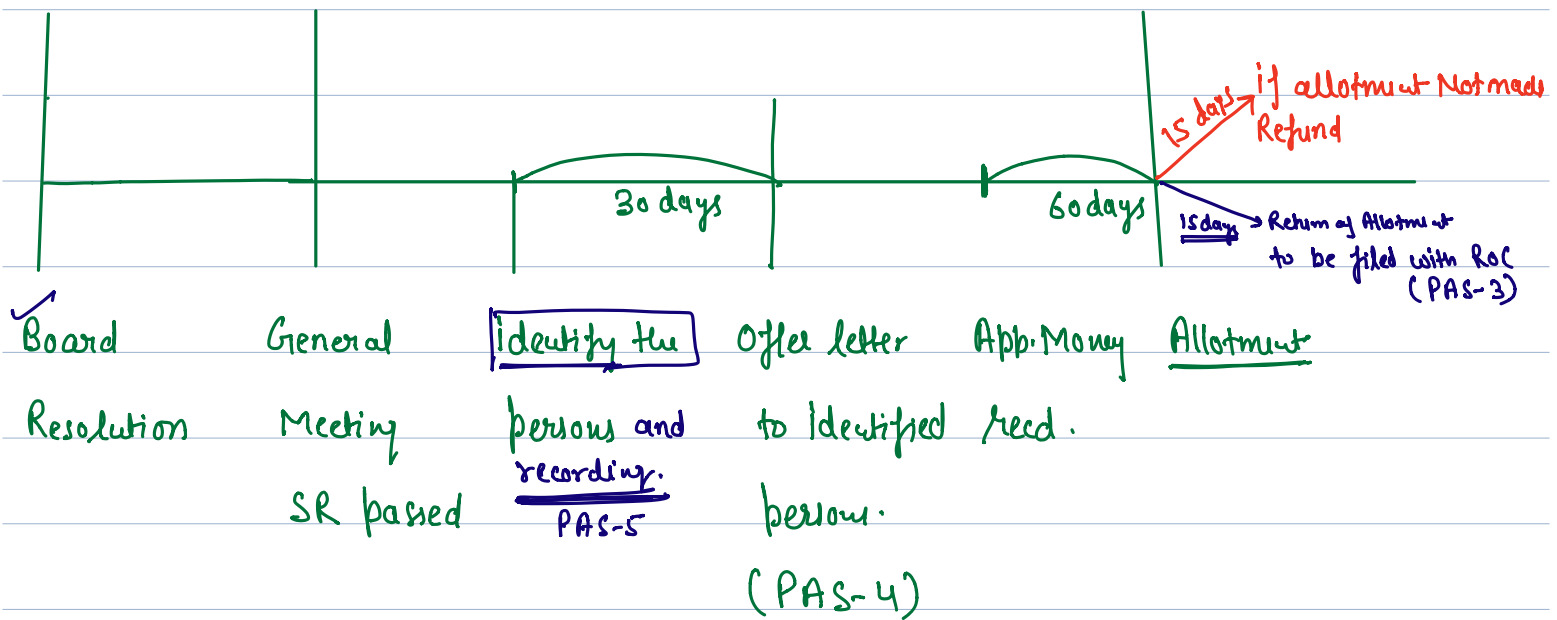
containing - Name, address, PAN, E-mail id of security holder

- class of security held

- date of allotment of security

- no. of securities held, nominal value and  
amount paid; and

- particulars of consideration recd. if entire  
securities are offered for consideration other  
than cash.



Note: Company shall maintain record of the private placements made in form No. PAS-5.

- ✓ Forms:
- PAS-1      Sec. 27 (Rule 7): Advt. of Notice for Varying the terms of Contract or Objects in Prospectus
  - ✓ PAS-2      Sec. 31 (Rule 10): Information Memorandum
  - ✓ PAS-3      Sec. 39 (Rule 12): Return of Allotment (Public offer)  
                   Sec. 42 (Rule 14): " " " (P.P.)
  - ✓ PAS-4      Sec. 42 (Rule 14): P.P. Offer cum application
  - PAS-5      Sec. 42 (Rule 14): Record of P.P. offers
  - PAS-6      Sec. 29 (Rule 9A): Reconciliation of Share Capital

Consequences of Non-compliance: - Covered from book. -

Home-work: Complete Revision of Chapter-3