PREFERENTIAL ISSUE VS PRIVATE PLACEMENT UNDER THE COMPANIES ACT, 2013

Raising money is essential for companies to grow and expand their businesses. The Companies Act, 2013 provides a comprehensive legal framework for raising capital by companies in India. 2 popular methods are preferential issues and private placements. While these terms might sound similar, they have different processes, rules, and purposes.

1. PREFERENTIAL ISSUE

A preferential issue refers to the allotment of shares or other securities by a company to a select group of investors on a preferential basis. These investors may include promoters, directors, or external entities. This mechanism is typically used when a company wants to raise funds without offering shares to the general public.

Key Provisions:

- ✓ **Governing Section:** Section 62(1)(c) read with Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.
- ✓ **Resolution Requirement:** A special resolution must be passed in a general meeting.
- ✓ **Valuation:** The price of the shares or securities offered must be determined by a registered valuer or a merchant banker.
- ✓ **Disclosures:** Detailed disclosures related to the offer must be made, including the identity of the allottees and the price at which shares are issued.
- ✓ **Lock-In Period:** Securities issued under a preferential issue are subject to a lock-in period, typically ranging from 1 to 3 years, depending on the category of investors.
- ✓ **Utilization of Funds:** The company must clearly disclose the purpose for raising funds and ensure that the amount raised is utilized only for that purpose.
- ✓ **Compliances with SEBI Regulations:** For listed companies, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, will also apply.

Process:

- Call a board meeting to approve the offer and issue of shares.
- Obtain the shareholders' approval through a special resolution.
- Determine the price and allotment based on a valuation report.
- File forms PAS-3) with the Registrar of Companies (RoC) with 30 days of allotement.

2. PRIVATE PLACEMENT

Private placement refers to an offer or invitation to subscribe to securities to a select group of persons, not exceeding 200 in a financial year (excluding qualified institutional buyers and employees offered securities under ESOP). Unlike a public issue, private placement is directed towards specific investors.

Key Provisions:
- **Governing Section:** Section 42 read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
- **Resolution Requirement:** A special resolution is required for each offer or invitation.

- **Offer Letter (PAS-4):** The Company must issue a private placement offer letter (PAS-4) to identified investors.

- **Number of Persons:** The offer can be made to a maximum of 200 people in a financial year, excluding QIBs and employees under ESOP.

- **Utilization of Funds:** The funds raised through private placement must be utilized only for the purpose disclosed in the offer letter.

- **Separate Bank Account:** The money received from investors must be kept in a separate bank account and can only be used after the allotment of securities.

- **Return of Allotment (PAS-3):** After the allotment, the company must file a return of allotment with the RoC within 15 days.

Process:

- Call a board meeting to approve the issue and offer.

- Issue a private placement offer letter (PAS-4) and maintain a complete record of the offer.

- Collect application money through a separate bank account.

- Allot the securities within 60 days of receiving the application money.

- File the necessary forms (PAS-3) with the RoC.

3. **Key Differences Between Preferential Issue and Private Placement**

SR. NO	Aspect	Preferential Issue	Private Placement
1	Governing Section	Section 62(1)(c) and Rule 13	Section 42 and Rule 14
2	Nature of Offer	Issued to a specific group, often promoters or strategic partners	Offered to a select group of investors, not exceeding 200
3	Valuation Requirement	Yes, valuation by a registered valuer or merchant banker	No mandatory requirement for valuation in the Act, but price must be justified
4	Offer Letter	No specific requirement for an offer letter	PAS-4 offer letter mandatory
5	Purpose	Generally for raising strategic capital or converting debt	Raising funds from external investors
6	Lock-In Period	Yes, usually applicable	No lock-in period
7	SEBI Regulations	Applicable for listed companies	Applicable for listed companies if equity shares are involved
8	Separate Bank Account for Money	Not required	Mandatory
9	Number of Investors	No specific cap	Maximum of 200 in a financial year

- **<u>Conclusion</u>**

Both preferential issues and private placements are useful ways for companies to raise money under the Companies Act, 2013. Each method has its own rules and benefits. A preferential issue is usually done for strategic reasons, like getting funds from promoters or important investors. On the other hand, private placement is more flexible and allows companies to invite outside investors. Companies must carefully follow the rules for each method to avoid any fines or legal problems.