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Preferential Offer to Existing Shareholders: Exemption from using Form PAS – 4

The Ministry of Corporate Affairs, on March 18, 2015, notified the Companies (Share Capital and Debentures) Amendment Rules, 2015 (“**Amendment Rules**”). An important amendment made by the Amendment Rules is that if a preferential offer is made by the Company to one or more existing members only, then the Company does not need to make such offer through Form PAS – 4 under Rule 14 of the Companies (Prospectus of Securities) Rules, 2014 and file the same with the Registrar of Companies. It must be noted that such exemption does not extend to the rules of Private Placement in general, but only to the usage of the prescribed Form PAS – 4 and its filing with the Registrar of Companies.

When a company makes a preferential offer to an existing shareholder, it must continue to comply with the rules and restrictions prescribed in Section 42 of the Companies Act, 2013 and Rule 14 of the Companies (Prospectus of Securities) Rules, 2014. This includes the requirement for the Company to issue a private placement offer letter to the existing shareholder, albeit the Company does not need to make the disclosures and the declarations required under Form PAS – 4. Further, the restrictions on usage of the share application money until the shares are allotted and the high penalty (the higher of INR 2,00,00,000 or the amount involved in the offer) for any contravention of the provisions of Section 42 shall continue to apply to all preferential offers.

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Despite the exemption from using Form PAS – 4 for a preferential offer to existing shareholders, companies may still choose to offer shares to existing shareholders through the rights issue route under Section 62 (1) (a) due to the stringent restrictions and compliances under Section 42 and the high penalty for any contravention thereof.

** Authors - Avimukt Dar, Kriti Bhatia, Priyanka Chandrasekhar*

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