

Provisions governing Dematerialisation of Securities (Private Companies)

MCA vide notification dated 27.10.2023, notified Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, and inserted Rule 9B under Companies (Prospectus and Allotment of Securities) Rules, 2014.

Rule 9B: Issue of securities in dematerialised form by Private Companies:-

- (1) Every private company, other than a small company, shall within the period referred to in sub-rule (2):-
 - (a) Issue the securities only in dematerialised form; and
 - (b) Facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.
- (2) A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months (**30.09.2024**) of closure of such financial year, comply with the provisions of this rule.
- (3) Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.
- (4) Every holder of securities of the private company referred to in sub-rule (2),- (a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or (b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.
- (5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.
- (6) The provisions of this rule shall not apply in case of a Government company.”

A. Definitions:

1. Small Company: “Small Company” means a company, other than a public company,-

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount **as may be prescribed** which shall not be more than ten crore rupees; **and**
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher **amount as may be prescribed** which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to-

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

Rule 2(1) (t) of Companies (Specification of Definitions Details) Rules, 2014 For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, **paid up capital and turnover** of the small company shall **not exceed rupees four crore and rupees forty crore** respectively.

2. Private Company: “Private Company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

3. Public Company: “Public Company” means a company which—

(a) is not a private company **and;**

(b) has a minimum paid-up share capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

4. Government company: “Government company” means any company in which **not less than fifty-one per cent of the paid-up share capital** is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, **and includes a company which is a subsidiary company of such a Government company;**

Explanation.- For the purposes of this clause, the “paid up share capital” shall be construed as “total voting power”, where shares with differential voting rights have been issued

B. Applicability:

1. Private Company
2. Subsidiary of Private Company
3. Wholly owned subsidiary of Private Company

C. Non-Applicability:

1. Government Company
2. Small Private Limited Company

D. Restrictions on Company, if provisions of this rule is not complied:

Restriction on further issue of any securities, unless it has dematerialized entire holding of securities of its:

- a) Promoters;
- b) Directors;
- c) Key Managerial Personnel

E. Restrictions on Shareholders, if provisions of this rule is not complied:

- 1. Who intends to transfer such securities **OR**
- 2. Who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer.

F. Compliance:

Now, Companies have to file e-form PAS-6 (Reconciliation of Share Capital), within 60 days from conclusion of each half of the financial year, certified by PCS or PCA.

G. Grievances:

Any grievances of securitiesholders shall be filed before the Investor Education and protection Fund Authority (IEPF).

Procedure for Obtaining ISIN by Private Companies

Step 01: Appointment of Registrar and Share Transfer Agent (RTA)*

The Company has to appoint at least one RTA and enter into a bilateral agreement with RTA on Rs. 600/- non-judicial stamp paper.

Step 02: Application to Depository for obtaining International Securities Identification number (ISIN):

The Company has to apply for obtaining ISIN from any of depository i.e. NSDL and CDSL. The following documents are required to be attached along with application:

- Board Resolution to appoint RTA and appointment of Depository.
- Tripartite Agreement between RTA, Company, and Depository on Rs. 600/- non-judicial stamp paper.
- Master Creation Form (MCF) on letterhead, duly digitally signed.
- CTC of Memorandum of Association (MoA) / Articles of Association (AoA).
- CTC of Certificate of Incorporation / Certificate of incorporation subsequent to name change.
- Copy of latest Audited Balance Sheet as of the financial year.
- Copy of PAN / TAN.
- Net worth certificates as of the financial year.
- Declaration of freeze/unfreeze of ISIN.
- Security details in soft and hard copy.

Step 03: Documents to be uploaded by RTA on Depository portal:

All the documents after verification, will be uploaded on the Depository portal by RTA for obtaining ISIN.

Step 04: Allotment of ISIN by Depository:

After due verification, the depository will issue/allot ISIN to the Company.

Step 05: Intimation to shareholders about ISIN and to dematerialize their physical securities certificates:

The company has to intimate/inform its shareholders about ISIN and request them to initiate dematerializing process of their physical securities certificates.

*** If the Company has infrastructure to carry on/maintain securities transfer facility in-house then, Appointment of RTA is not mandatory**

Procedure for Dematerialisation of Securities

The most important thing to keep in mind is that before an investor can initiate the process of dematerializing their securities, the concerned company has to obtain an ISIN from the depository (NSDL/CDSL).

Step 01: Submission of physical securities certificate to Depository Participant (DP):

The Shareholders have to submit a Demat Request Form (DRF) along with their physical securities certificate to their Depository Participant (DP).

Step 02: Generation of Demat Request Number (DRN) by DP:

The Depository Participant (DP) will generate a Demat Request Number (DRN) on basis of Demat Request Form (DRF) along with cancelled physical securities certificate(s) filed/submitted by shareholder(s).

Step 03: DP forward DRN, cancelled Securities Certificate(s) etc.to Company/RTA:

The Depository Participant (DP) will forward DRN, cancelled Securities Certificate(s) along other documents to Company/RTA.

Step 04: Submission of Demat Confirmation Report (DCR) by RTA to Company:

RTA will submit a Demat Confirmation Report (DCR) to the Company for verification.

Step 05: After verification, Company will send duly filled DCR to RTA:

The Company has to verify the Demat Confirmation Report (DCR) submitted by RTA and upon verification, send/ submit the duly filled DCR to the RTA.

Step 06: Credit of securities to Securitesholders' Demat accounts:

Upon due verification of the DCR, RTA will credit shares to shareholders' Demat accounts.

***Thank you so much & Sharing is Caring
Shree Radhe Krishna...***