

INDIA LEGAL UPDATE

November 28, 2023

Issue of securities in dematerialised form by private companies

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| Notification Date: |
| October 27, 2023 |
| Effective Date: |
| October 27, 2023 |
| Legal Framework: |
| Companies Act, 2013 Companies (Prospectus and Allotment of Securities) Rules, 2014 |
| Government Authority: |
| Ministry of Corporate Affairs (MCA) |
| Weblink: |
| MCA Notification |

LEGAL UPDATE

MCA mandates the issue of securities in dematerialised form by private companies.

Notable Amendments are:

Rule 9B: Dematerialised Securities

Every private company, other than a small company, shall

- issue the securities only in dematerialised form; and
- facilitate dematerialisation of all its securities.

Compliance Deadline: A private company, which is not a small company as on last day of a financial year, i.e., March 31, 2023, shall, within 18 months of closure of such financial year, i.e., September 30, 2024, comply with these provisions.

Issue, Buyback, Bonus, and Rights Issue: Every private company referred above making any offer for issue / buyback of any securities / issue of bonus shares / rights offer, post September 30, 2024, shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMPs has been dematerialised as per the provisions of the Depositories Act, 1996 and regulations made thereunder.

Transfer and Acquisition of Shares: Every holder of securities of the private company:

- 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
- who subscribes to any securities of the concerned private company, whether by way of private placement / bonus shares / 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.

Applicability of Rule 9A: The provisions of sub-rules (4) to (10) of Rule 9A shall, *mutatis mutandis*, apply to the dematerialisation of securities under this rule.

- Dematerialize their existing securities and obtain ISIN for each type of security, informing existing security holders.
- Pay fees to depositories and registrar, maintain a security deposit, and comply with relevant regulations as issued by SEBI or Depository from time to time
- Defaulting companies cannot offer securities, buy back shares, or issue bonus/right shares until payments are made.
- Relevant regulations and Acts such as SEBI Regulations and Depositories Act shall apply to the dematerialization of securities.
- Filing Form PAS-6 with the Registrar every half year.
- Any differences in issued and dematerialized capital must be reported to depositories.
- Security holders shall file their grievances before the Investor Education and Protection Fund Authority.
- The IEPF Authority can take action against depositories, participants, or registrar to an issue after consultation with the Securities and Exchange Board of India.

Non-Applicability / Exclusions: Small Company and Government Company.

Small Company means a company, other than a public company:

- (i) paid-up share capital does not exceed four crore; and
- (ii) turnover does not exceed forty crore.

The following companies shall not be considered small company:

- (a) holding company or subsidiary company, or
- (b) company registered under section 8; or
- (c) company or body corporate governed by any special Act;

Private companies, before making any offer for the issue of any securities or buyback of securities or issue of bonus shares or rights offer or transfer of securities, ensure that the entire holding of securities of its promoters, directors and KMPs and acquirer gets dematerialized before making such offer.

In case of default, the company and every officer in default shall be punishable with a penalty up to Rs. 10000, and if the contravention continues, an additional fine of up to Rs. 1000 per day may be imposed by the Government.

The MCA aims to achieve a good corporate governance system by increasing transparency and preventing malpractices. It will further eliminate risks associated with physical certificates, such as loss, theft etc., and make the transfer of securities easier.

Queries?

If you have any queries about this article, please reach out to our experts:



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