

PAS-6

Reconciliation of Share Capital Audit Report

Deme

The Ministry of Corporate Affairs in its drive to enhance transparency, investor protection and corporate governance, has notified Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 on 10 September 2018 effective from 02nd October 2018. So, Provisions of PAS-6 become effective from 02nd October 2018.

In accordance with the said rules, **unlisted public companies** need to dematerialize its existing securities and ensure that further issue of securities and transfers are only in dematerialized form.

Note:

- PAS-6 not applicable on Private Companies and Listed Companies.

A. Dematerialization:

Dematerialization is the process of converting Physical Securities into electronic format. It should be related to Listing of securities. A Shareholder intending to dematerialize its securities needs to open a Demat account with Depository Participant. Investor Deface and surrenders his Physical Securities and in turn gets Electronic Shares in his Demat Account:

B. Benefit of Dematerialization:

- Elimination of risk of duplication, theft, fraud and loss with respect to physical share certificates.
- Exemption from payment of stamp duty on transfer.
- Ease in transfer and pledge of securities.

C. Applicability:

Every unlisted public company with effect from 02 October 2018 shall-

- Issue its securities only in dematerialized form; and
 - Ensure dematerialization of all its existing securities
-

A. Major Impact of Dematerialization on Company:

- I. After 02.10.2018, Unlisted Company has to ensure that entire holding of securities of its Promoters, Directors, Key Managerial personnel is in dematerialized Form, **otherwise company shall not be able to do followings:**
 - Issue of securities;
 - Buy-back of securities;
 - Issue of bonus shares; and
 - Rights issue
 - II. **From 02.10.2018, all new issue of securities or transfer of securities shall be only in Dematerialize form for public unlisted companies.**
-

iii. **Impact on Security Holders (Transfer / subscription of Securities):**

Rule 3 of the amendment specifies that every holder of Securities who intends to transfer securities or who intends to subscribe to any securities of an unlisted public company has to make sure that all their existing Securities are held in dematerialized form before such transfer or subscription to the Securities;

STEPS BY COMPANY:

FIRST STEP:

As per Rule 9A (3) every holder of security of PUC can transfer its shares on or after 02nd October, 2018 only in Demat Form. For conversion of shares into Demat shareholders required ISIN No. of Company.

As per Companies Act, 2013 Rule 9A it is responsibility of company to give opportunity to its shareholders to convert their shares into Demat. Therefore, all the PUC required applying for ISIN on or before 2nd October, 2018.

Even as per Rule 9A (4) **Every** unlisted public company shall facilitate dematerialization of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.

One can opine that:

It is mandatory for all PUC to apply for ISIN no. to comply with provisions of Rule 9A. Irrespective of the fact whether shareholders want to transfer its shares or not. It is responsibility of Company to facilitate dematerialization to share holders.

Consequences:

As there is no penalty/ fine prescribed under rule 9A therefore, as per section 450 of Companies Act, if no penalty/ fine prescribed in any Rule or Section then penalty / fine shall be as per Section 450 i.e.

The **COMPANY** and **EVERY OFFICER** of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

SECOND STEP:

As per first step it is concluded that it is mandatory for Public Limited Companies to apply for ISIN. In second step what are the compliances on Public Limited Company after allocation of ISIN:

As per Rule 9A(8) Every unlisted public company governed by this rule shall submit **Form PAS-6** to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules,2014 **within sixty days from the conclusion of each half year** duly certified by a company secretary in practice or chartered accountant in practice.

One can opine that:

Every PUC mandatorily required to file Reconciliation of Share Capital Audit Report with Roc within 60 days of end of half year.

For the half year ended 31.03 due date is 30th April and for 30.09 Due date is 29 November. (Irrespective of fact shareholders converted shares in Demat or Not)

However, in Reconciliation of Share Capital Audit Report Company have to give details of Shares in Physical as well as shares in Demat. Therefore if shareholders have not converted their shares into Demat then report will required to mention details of shares in physical

Consequences:

As there is no penalty/ fine prescribed under rule 9A therefore, as per section 450 of Companies Act, if no penalty/ fine prescribed in any Rule or Section then penalty / fine shall be as per Section 450 i.e.

The **COMPANY** and **EVERY OFFICER** of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

THIRD STEP:

In third step further compliances on Public Limited Company after allocation of ISIN:

- A. Make timely payment of Fees (admission as well as annual).
- B. Maintenance of Security deposit of 2 years' Fees, as per agreement executed with the followings:
 - Depository;
 - Registrar to an issue;
 - Share Transfer Agent

C. Comply with the regulations, guidelines or circulars, if any issued by **the Securities and Exchange Board or Depository** from time to time.

MOST IMPORTANT QUESTION – IMPACTS

Company

- Apply for ISIN
- File Half yearly Audit Report
- If fails to comply above liable for fine under section 450

Shareholders

- Untill Unless dont convert shares in Demat
- Can't make any transfer and subscription of shares

Therefore, one can opine that

- In case Company fails to apply for ISIN or fails to file half yearly audit company is liable for consequences under Section 450.
- If shareholders fails to convert shares in Demat they are liable for consequences i.e. not able to transfer of shares not able to subscribe shares.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com).

Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, I assume no responsibility therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not a professional advice and is subject to change without notice. I assume no responsibility for the consequences of use of such information. IN NO EVENT SHALL I SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE INFORMATION