

Mandatory Demat of Shares of Private Limited Company

MCA Notification Dated: 27.10.2023.

(28th October 2023)

SHORT SUMMARY:

The author will cover the "*Mandatory Demat of Securities of Private Limited Companies*" in this column.

The MCA has issued a Notification. Dated: October 27th, 2023 -Subject: Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023.

As per provisions of Companies Act, 2013 MCA has already made it mandatory for Public Companies to keep and transact their shares in Demat w.e.f. 02nd October 2018. That time it was not mandatory for Private Limited Companies to Demat their Shares.

The Ministry of Corporate Affairs in its drive to enhance transparency, investor protection and corporate governance, has notified Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 effective from 30th September 2024.

In accordance with the said rules, Non-Small Private Limited Companies need to dematerialize their existing securities and ensure that further issue of securities and transfers are only in dematerialized form.

MCA has given 18 months' time to Private Limited Company w.e.f. 31 March 2023 to 30 September 2024 for compliance of provision of these rules.

Provisions of Companies Act, 2013:

- Section 29
- Rule 9 of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023

A. NON-APPLICABILITY:

The provision of Demat of Securities shall not be applicable on the following Companies:

1. Nidhi Company
2. Government Company
3. Wholly Owned Subsidiary Company of Public Company
4. Small Private Limited Companies

B. APPLICABILITY:

1. Applicable on Public Limited Companies w.e.f. 02nd October, 2018
2. Applicable to Non-Small Private Limited Companies w.e.f. 30th September 2024.

Small Company

“small company” means a company, other than a public company,— (DG)

- i. **paid-up share capital** of which does not exceed **Four Crore rupees** or such higher amount as may be prescribed and
- ii. **turnover** of which as per profit and loss account for the immediately preceding financial year does not exceed **Forty crore rupees** or such higher amount as may be prescribed (DG)

Provided that nothing in this clause shall apply to— (DG)

- (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.

INTRODUCTION

MCA has added Rule 9B after Rule 9. As per the amendment,

Every non-small private company with effect from 30 September 2024 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:**

- a) Issue of securities.
- b) Buy-back of securities.
- c) Issue of bonus shares; and
- d) Rights issue

II. From 30.09.2024, all new issue of securities or transfer of securities shall be only in Dematerialize form for Non-Small Private Companies.

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

As per Sub Rule 4 of Rule 9B of the amendment specifies that, every holder of Securities

- i. who intends to transfer securities on or after 30 September 2024 shall get such securities dematerialized before the transfer; or
- ii. who intends to subscribe to any securities of the concerned Private Limited Company has to make sure that all their existing Securities are

held in dematerialized form before such transfer or subscription to the Securities.

A. PROCESS OF COMPLIANCES:

FIRST STEP:

As per Rule 9B every holder of security of Non-Small Private Limited Company can transfer its shares on or after 30th September 2024 only in Demat Form. For conversion of shares into Demat shareholders require ISIN No. of Company.

As per Companies Act, 2013 Rule 9B it is the responsibility of company to give opportunity to its shareholders to convert their shares into Demat. Therefore, all the Non-Small Private Limited Company required applying for ISIN on or before 30th September 2024.

Even as per Rule 9B(5) and Rule 9A(4) Every Non-Small Private Limited 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 Non-Small Private Limited Company to apply for ISIN no. to comply with provisions of Rule 9B. Irrespective of the fact whether shareholders want to transfer their shares or not. It is the responsibility of Company to facilitate dematerialization to shareholders.

Consequences:

As there is no penalty/ fine prescribed under rule 9B 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 the first step it is concluded that it is mandatory for Non-Small Private Limited Company to apply for ISIN. In second step what are the compliances on Non-Small Private Limited Company after allocation of ISIN:

As per Rule 9A(8) Every Non-Small Private Limited 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 Non-Small Private Limited Company 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 May 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 Non-Small Private 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 Reconciliation Report
- If fails to comply above liable for fine under section 450

Shareholders

- Until Unless don't 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.

B. PROCESS OF COMPLIANCES:

Most Important: Every Non-Small Private Company 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.

Key Highlight of E-Form PAS-6:

1. All information shall be furnished for the half year ended 30th September and 31st March in every half financial year for each ISIN separately
 2. Mention ISIN of the Company
 3. Detail of capital of company:
 - Issued Capital
 - Held in dematerialised form in CDSL
 - Held in dematerialised form in NSDL
 - Held in Physical form
 - Reason for any difference in Issued & Total Capital
 4. Details of changes in share capital during the half-year under consideration.
 5. Detail regarding Updation of Register of Members and reason for non updation.
 6. Whether there were dematerialised shares in excess in the previous half-yearly period and whether company resolved the matter mentioned in point no. 10 above in the Current half-year
 7. Mention the total no. of demat requests, if any, confirmed after 21 days and the total no. of demat requests pending beyond 21 days with the reasons for delay.
 8. Details of Company Secretary of the Company, if any.
 9. Details of CA/CS certifying this form.
 10. No penalty is prescribed for non-compliance than in this case Section 450 of Companies Act, 2013 shall become applicable.
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