

Editorial 953

Impact of Extension/ Relaxation of Date of Demat of Shares on Transactions of Non Small Private Limited Company

MCA Notification Dated: 12 Feb 2025

(12th February 2025)

SHORT SUMMARY:

The author will cover the "Impact of Extension of Date of Demat of Shares on Non-Small Private Limited Company" in this column. Some of these Questions asked by the Professionals through social media or YouTube Webinar.

*The MCA has issued a Notification. Dated: February 12th, 2025 i.e. due Date of applicability of provisions of Demat has been changed from 30 September 2024 to **30th June 2025**.*

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

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.

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.

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. This Time period extended from 30 September 2024 to 30th June 2025.

Hope after reading this editorial the doubt of professionals in relation Extension/ Relaxation Notification to Demat shall be clarified.

Impact of Extension/ Relaxation Notification:

Que 1.1: Whether shareholders of private limited Company can transfer shares in physical before 30 June 2025? (DG)

Ans 1.1: The provisions of Demat shall be applicable on Private Companies e.f. 30 June 2025, till this date share holder can freely transfer their shares in physical.

Que 1.2: Whether private limited Company can issue shares in physical before 30 June 2025? (DG)

Ans 1.2: The provisions of Demat shall be applicable on Private Companies w.e.f. 30 June 2025, till this date company can freely issue shares in physical.

Que 1.3: Can a shareholder of Private Limited Company continue holding shares physically even after 30 June 2025? (DG)

Ans 1.3: As per amendment it is not mandatory for shareholders to convert their shares into Demat. But if they will not convert their shares into Demat they will not able to transfer, and will not eligible for new issue offers, buy back of shares after 30 June 2025, until unless they will not convert such shares in Demat.

Que 1.4: A private company's shareholders may not have changed their shares to Demat even though it has already received its ISIN. Can shares of such a company be physically transferred till June 30, 2025?

Ans 1.4: The provisions of Demat shall be applicable on Private Companies e.f. 30 June 2025, till this date share holder can freely transfer their shares in physical irrespective of nature whether such company has obtained ISIN or not.

Que 1.5: A private company's shareholders may not have changed their shares to Demat even though it has already received its ISIN. Can such Company issue/ allot new shares in physically mode transferred till June 30, 2025?

Ans 1.5: The provisions of Demat shall be applicable on Private Companies e.f. 30 June 2025, till this date company can freely issue shares in physical irrespective of nature whether such company has obtained ISIN or not.

Que 1.6: Has the ISIN provision been expanded to apply to Section 8 Companies as well?

Ans 1.6: Yes, this extension is applicable on Section 8 Companies also along with Private Limited Companies.

Que 1.7: Should the company process pending physical share transfers before June 30, 2025?

Ans 1.7: Yes, companies should process any pending physical share transfer before the deadline to avoid compliance issues. After June 30, 2025, the company cannot register any physical transfers if Rule 9B applies.

Que 1.8: Can a private company issue new shares in physical form before June 30, 2025?

Ans 1.8: Yes, a company can issue shares in **physical form** until June 30, 2025. However, after this date, all issuances (including rights issue, bonus shares, or private placements) **must be in Demat form** for companies under Rule 9B.

Que 1.9: Will the Non-Small Private Company be required to file form PAS-6 for half year ending March 2025 in May 2025?

Ans 1.9: The provisions of the Present Amendment are applicable from 30th June 2025. Therefore, first half year shall start from First half year shall end on 30th September 2025.

Therefore companies will be required to file form PAS-6 for the half year ending on September 30, 2025 and therefore the due date of first PAS 6 shall be 30th November, 2025.

Que 1.10: If all the shareholders have not converted their shares in Demat, whether, Company is required to file PAS 6?

Ans 1.10: In Reconciliation of Share Capital Audit Report i.e. PAS 6, Company have to give details of Shares in Physical as well as shares in Demat. Therefore, even if shareholders have not converted their shares into Demat the company is required to file PAS-6.

Applicability

Que 1: Which companies are exempted from the provisions of dematerialize?? (DG)

Ans 1: The provisions of dematerialization are not applicable on following Companies.

- i. Nidhi Company.
- ii. Government company
- iii. A wholly owned subsidiary of a public company
- iv. Small Private Limited Company

Que 2: Which companies are mandatorily required to dematerialize? (DG)

Ans 2: The provisions of dematerialization are applicable on following Companies:

- i. Public limited companies (DG)
- ii. non-small private limited companies (DG)
- iii. Section 8 Company (DG)
- iv. Subsidiary of a Foreign or Indian Company (DG)
- v. Producer Company (non-small) (DG)
- vi. Dormant Company (non-small) (DG)
- vii. a wholly owned subsidiary of a private company (DG)
- viii. NBFC (DG)

Que 3: Whether small companies are required to convert their securities into demats? (DG)

Ans 3: Small Companies are exempted from the provisions of Dematerialization.

“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.

Que 4: Whether provisions of Dematerialization applicable on Section 8 Company? (DG)

Ans 4: Section 8 Company shall always be considered as a Non-Small Company. Therefore, Section 8 Company public or Private the provisions of Demat applicable on them. (DG)

Que 5: Whether provisions of Dematerialization applicable to Producer Company? (DG)

Ans 5: As the name of the Company ends with Producer Company Limited it seems to be a Public Company but as per clause (5) of the section 581C of Companies Act, 1956, on registration the Producer Company shall become a body corporate as if it is a Private Company and shall not under any circumstances deemed to be a Public Company. (DG). Therefore, Producer Company (Small) are exempted from the provisions of the Dematerialization.

Que 6: Whether provisions of Dematerialization applicable on Wholly owned Subsidiary of Private Limited Company? (DG)

Ans 6: The provisions of Demat shall be applicable on the Wholly owned Subsidiary of Private Limited Company. (DG) The exemptions available under Rule 9A (11) are not applicable to private companies under Rule 9B. Therefore, provisions of Demat not applicable on the Wholly owned subsidiary of Public Limited Company.

Que 7: Whether provisions of Dematerialization applicable on Subsidiary of foreign Company? (DG)

Ans 7: A subsidiary Company shall always be considered as a Non-Small Company. Therefore, the provisions of Demat applicable to subsidiaries of Foreign Company. (DG)

Que 8: Whether provisions of Dematerialization applicable on Subsidiary of Indian Private/ public Company? (DG)

Ans 8: A subsidiary Company shall always be considered as a Non-Small Company. Therefore, the provisions of Demat applicable to subsidiary of Private / Public Company. (DG)

Que 9: Whether provisions of Dematerialization applicable on Nidhi Company? (DG)

Ans 8: A Nidhi Company shall always be considered as Public Company as per provisions of Companies Act. Further, Nidhi companies are exempted from the applicability in terms of Rule 9A (11) of PAS Rules. Therefore, the provisions of Demat shall not be applicable to Nidhi Company. (DG)

Que 10: Whether provisions of Dematerialization applicable on Government Company? (DG)

Ans 10: Government Companies are exempted from the provisions of Dematerialization.

“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.

Que 11: Whether shares of private company shall be transfer freely by overriding the impact of section 2(68) after applicability of provisions of Dematerialization? (DG)

Ans 11: Under Companies Act, private companies are recognized by certain basic features and attributes which distinguish them from public companies, viz.: (a) restriction on transfer of shares / securities in a manner prescribed by articles of association, (b) prohibition to invite members of the public to subscribe to any securities of the company, and (c) number of members of the company shall not exceed 200 except in certain exceptional circumstances. The Amendment is not intended to amend the basic structure of a Private Company. Private Company has the power to reject the transfer of shares.

Operationally, at the time of applying for dematerialization, private companies should inform the depositories about the restrictions in its charter documents and request both depository and depository participant to act in such manner so as to preserve, protect and effectively enforce and implement the inherent restrictive characteristics of such Private Company. The Depositories and Depository Participants will have to evolve uniform practices to ensure that dematerialization does not enable any rogue security holder to bypass the restrictive covenants in the charter documents of a Private Company

Que 12: Whether Private Limited Companies need to amend their Article of Association (AOA) to add clause of Demat? (DG)

Ans 12: The Private Limited Companies have to amend their Article of Association to authorize shareholders to hold securities in dematerialized form. Company should amend the AOA before applying for the ISIN with Depository.

Process of Demat

Que 3.1: Immediate actions required by the Company? (DG)

Ans 3.1: The Company must take the following action Immediately:

- i. Hold the Board meeting for following purposes:
 - To call general meetings for amendment in AOA (if required)
 - To select the RTA to apply for ISIN.
- ii. To Appoint an RTA
- iii. To enter triparty agreement between Company, RTA and Depository
- iv. Submission of Application with depository through RTA
- v. Issuance of ISIN by Depository
- vi. Communicate the ISIN to Shareholders

Que 3.2: Whether Company required to register with both NSDL and CDSL? (DG)

Ans 3.2: It is not mandatory for companies to apply ISIN with both depositories. However, then shareholders have to make sure that their demat account is with the same depository as the Company, otherwise they will not able to convert their shares into Demat.

Que 3.3: What is the role of RTA? (DG)

Ans 3.3: The role of RTA is to act as an intermediary between the issuer and the depository for facilitating dematerialization and corporate actions undertaken by the issuer thereafter.

It is not mandatory to appoint an RTA. But in this case a company will have to purchase the software from the relevant depository.

Que 3.4: Whether Company is required to obtain separate ISIN for different type of securities? (DG)

Ans 3.4: The Company is required to obtain separate ISIN for each type of Securities. Like: all kinds of securities such as Equity-fully paid up, equity-partly paid up, equity with differential voting /dividend rights, preference shares, debentures issued by the same issuer will have different ISINs.

Que 3.5: What is ISIN? (DG)

Ans 3.5: ISIN (International Securities Identification Number) as a unique 12 digit alpha-numeric identification number allotted for security.

Que 3.6: How can shareholders convert their shares into demat? (DG)

Ans 3.6: the shareholders will have to open a demat account with a Depository Participant and undertake the process of demat by submitting the Demat Request Form (DRF) along with the share certificates for dematerialization.

Que 3.7: A company has issued different classes of preference shares. Whether ISIN for each class is required to be obtained?

Ans 3.6: Yes, Company has to obtain Separate ISIN for each class of shares. In the given question, company have to obtain more then one ISIN for Preference shares classes.

Compliances – PAS 6

Que 4.1: What are the Compliances of the Company? (DG)

Ans 4.1: The Company must do the following compliances after receipt of ISIN.

- i. Facilitate all its shareholders to dematerialization of all its existing securities.
- ii. Make timely payment of Fees (admission as well as annual).
- iii. Maintenance of Security deposit of 2 years' Fees, as per agreement executed with the followings:
 - Depository.
 - Registrar to an issue.

- Share Transfer Agent
- iv. Comply with the regulations, guidelines, or circulars, if any issued by the Securities and Exchange Board or Depository from time to time.
- v. 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.

Que 4.2: What is the Due Date of PAS 6? (DG)

Ans 4.2: The Company is required to file PAS 6 within 60 days from the date of the conclusion of each half year. i.e.

- Half year ended **30th September: 30th November;** and
- Half year ended **31st March: 30th May.**

Que 4.3: If a company has multiple securities, does it need to file multiple Form PAS 6? (DG)

Ans 4.3: Yes, Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 is applicable for each class of security and in Form PAS-6 only one ISIN can be entered. Hence for multiple types and classes of securities, multiple forms are required to be filed.

Que 4.4: If the shareholders of an unlisted public company have not yet converted their shares in Demat Form? Whether such company needs to file PAS-6?? (DG)

Ans 4.4: Its doesn't matter, whether shares of shareholders converted into Demat or Not. Companies have to file PAS 6 every half year.

Que 4.5: Whether Company have to file PAS 6 for Debentures? (DG)

Ans 4.5: As per the instruction kit of the form it should be file only for shares. Therefore, no need to file PAS 6 for debentures.

Que 4.6: Whether Company need to attach any document with PAS 6? (DG)

Ans 4.6: There is no need of any attachment for filing of PAS-6.

Que 4.7: Who can certify PAS 6? (DG)

Ans 4.7: only Practicing Company Secretary or A Practicing Chartered Accountant is authorized to certify the form PAS-6.

Que 4.8: What are the consequences for non-filing of PAS-6? (DG)

Ans 4.8: As there is no penalty prescribed under rule 9A for non-compliance, therefore Section 450 of Companies Act, 2013 (punishment where no specific penalty or punishment is provided) will be applicable.

As per Section 450, 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 Rs. ten thousand, and where the contravention is continuing one, with a further fine which may extend to Rs. one thousand for every day after the first during which the contravention continues.

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