

COMPULSORY DEMATERIALISATION OF SECURITIES FOR PRIVATE COMPANIES

1. INTRODUCTION:

On 27th October, 2023, the Central Government by way of a notification G.S.R. 802(E), notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“**Amendment Rules**”) inserting a new rule 9B making it mandatory for every private company, except a small a company, to issue shares in dematerialised form and facilitate dematerialisation of all its securities in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

As per section 2(85) of the Companies act, 2013 a small company means a company, other than a public company whose,

- a) paid up share capital does not exceed four crore rupees, or such higher amount as may be prescribed, and
- b) 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.

Provided that nothing in this clause shall apply to

- (i) a holding company or a subsidiary company;
- (ii) a company registered under section 8; or
- (iii) a company or body corporate governed by any special Act.

2. BACKGROUND:

Under the provisions of the Companies Act, 2013, the Ministry of Corporate Affairs (“**the MCA**”) previously mandated that public companies except a nidhi, a government company, or a wholly owned subsidiary, must maintain and transact their shares in dematerialised form starting from October 2nd, 2018. However, this requirement did not extend to private limited companies at that time.

3. KEY AMENDMENTS:

To encourage transparency, safeguard investor interests, and strengthen corporate governance, the MCA has introduced the Amendment Rules, which come into effect on September 30th, 2024. In accordance with these rules, private limited companies except small companies are obligated to dematerialize their existing securities and ensure that any future issuance or transfer of securities is conducted exclusively in demat form.

The Amendment Rules also inserted a sub rule 2 under Rule 9 making it compulsory for every public company which has issued share warrants prior to the Companies Act, 2013 and have

not converted such warrants into shares, to inform the Registrar about the details of such share warrants in form PAS-7 within three months from the date of this notification. Within a period of six months of the commencement of the Amendment Rules, the bearers of the share warrants are required to surrender such warrants to the company and get the shares dematerialised in their account. The Company is required to place a notice for the bearers of share warrants in PAS-8 on the website of the company, if any and publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which registered office of the company is situated. Where the bearer of share warrants does not surrender the share warrants within the period of six months, the company shall convert such share warrants in dematerialised form and transfer the same to Investor Education and Protection Fund.

4. ANALYSIS:

The requirement for dematerialization of securities does not apply to specific types of companies, including nidhi companies, government companies, wholly owned subsidiary, and small companies. Earlier it was not applicable to a wholly owned subsidiary company, however, with the recent notification, a wholly owned subsidiary companies will also be covered under rule 9B unless it is a small company.

After September 30, 2024, all new issue of shares shall be in dematerialise form only. As per sub-rule 4 of rule 9B 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 must make sure that all their existing securities are held in dematerialized form before such transfer or subscription to the securities.

As per the Companies Act, 2013 rule 9B sub rule 4 and 5, it is the responsibility of company to give opportunity to its shareholders to convert their shares into demat form. Therefore, all private limited companies (except small companies) are required to apply for ISIN number on or before 30th September 2024.

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