



LATEST STATUTORY SNAPSHOT

FRIDAY, 26 APRIL 2019



Filing of Audit report under Regulation 55A of SEBI (Depositories and Participants) Regulations, 1996 by unlisted companies

Vide the amendment to Companies (Prospectus and Allotment of Securities) Rules, 2014, dated 02nd October, 2018, Rule 9A was inserted which inter alia mandated

- unlisted companies to issue securities only in dematerialised mode on or after the said Notification date i.e., 02nd October, 2018;
- facilitate dematerialisation of all its existing securities in terms of Depositories Act, 1996 and regulations made thereunder;
- every unlisted company before making any offer of securities shall ensure that the existing holdings of securities by promoters, directors or key managerial personnel should be dematerialised;
- any transfer of shares after 02nd October, 2018 has to be made only in dematerialised mode.

It may be noted that the requirement of dematerialisation arises only if a proposal to issue securities is to be made or if transfer of securities of unlisted company has to be effected. In the absence of any requirement of issue of securities or transfer of shares, it is obvious that an unlisted company is not required to dematerialise its securities.

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One of the important requirements under the said Rule 9A is obtaining of an audit report from a practicing company secretary (PCS), or a practicing chartered accountant (PCA) under Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996 (the Regulations) and filing of the same by the unlisted company on a half-yearly basis with the Registrar of Companies (RoC) within whose jurisdiction the registered office of the unlisted company is situated.

Further, it may be noted that while the requirement for compulsory dematerialisation arises for all kinds of securities issued by an unlisted company, the requirement of audit for reconciliation of paid-up share capital under Regulation 55A of the said Regulations arises only for securities which are equity shares or preference shares forming part of the paid-up capital of the unlisted company. Hence, the said audit requirement will not arise if Non-Convertible Debentures (NCDs) or any other non-convertible debt securities are issued even though the same is required to be issued or maintained in dematerialised mode.

Hence in terms of said Regulation 55A, the unlisted company is required to conduct an audit for reconciliation of its issued, subscribed and paid-up share capital held both in dematerialised mode and in physical mode through a PCS or PCA for the half year ended 31st March, 2019. No format for the audit report is prescribed under the Regulations for unlisted companies. The said Rule 9A neither states any due date for filing the said audit report nor it prescribes the e-form through which the said audit report is required to be filed with the RoC. Hence, the said audit report can be filed using e-form GNL-2.

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