



Mandatory Dematerialisation of Private Company's Securities, Disclosure regarding Share Warrants of Public Company and Appointment of Designated Person w.r.t. Beneficial Interest

Through its two recent Notifications dated 27th October, 2023 the Ministry of Corporate Affairs (MCA) has effected amendments to certain provisions in (a) Companies (Prospectus and Allotment of Securities) Rules, 2014 and (b) Companies (Management and Administration) Rules, 2014;

The said Notifications unfolds three major amendments:

- (i) Securities of private companies other than those companies that are either small companies or government companies should be compulsorily dematerialized. This must be accomplished within 18 months from the date of closure of the financial year ending on or after the 31st March 2023 i.e., on or before 30th September, 2024.
- (ii) Public Companies that have issued share warrants prior to the commencement of Companies Act, 2013, are required to notify the Registrar of Companies (RoC) within 3 months from 28th October 2023, the particulars of such share warrants which have not yet been converted into shares. Such warrants also to be converted into shares within 6 months from the said date.
- (iii) Companies in which there are members who do not hold beneficial interest in the shares held by them are required to appoint a designated person who shall act as a coordinator between the company and RoC or other authorities as may be specified in Companies Act, 2013 (the Act);

Dematerialising Securities of Private Company

The insertion of Rule 9B of Companies (Prospectus and Allotment of Securities) Rules, 2014 makes it mandatory for every private company (other than government company and small company) to dematerialise its securities. If a private company makes any issue of securities or resolves to buyback its securities or proposes to issue of bonus shares or makes a rights offer after 30th September, 2024 i.e., 18 months from closure of the financial year 2022- 2023, it shall ensure that all such issues or offers relating to securities have to be made only in dematerialised mode. Further, before making any such issues or offer, it shall ensure dematerialisation of all securities by its promoters, directors and KMPs.

After 30th September, 2024 every holder of securities in a private company who intends to transfer such securities has to mandatorily dematerialise his holdings before such transfer. Any transmission of shares will also mandate dematerialisation of such shares.

Every private company has to secure International Security Identification Number (ISIN) from a depository like the National Securities Depository Limited (NSDL) to facilitate dematerialisation of its existing securities.



It may be noted that vide Notification dated 02.10.2018 every unlisted public company (other than a Nidhi, government company and a wholly owned subsidiary) issuing securities, proposing buy back of securities or issuing rights or bonus securities is required to issue the same only in dematerialized mode. Securities Exchange Board of India (SEBI) had long put in place regulations for issue, transfer and transmission of securities only in dematerialized mode. Further, SEBI has made it mandatory for physical holdings of securities in listed companies to comply with KYC norms on or before 30th September, 2023, failing which such holdings will be frozen and no corporate benefits like dividend, bonus etc. will accrue to such securities.

While it is a fact that there is no compulsion for the holder of securities to dematerialize his physical holdings as long as there is no proposal to transfer securities or subscription to a new issue, bonus or rights issue. Hence mere holding on to securities in physical form does not mandate dematerialization.

Dematerialization of securities facilitates ease in holding and transferring securities and avoids risks like theft, lost or mutilation of securities certificates and fraudulent transfers.

Every private company has to file e-form PAS-6 within sixty days of conclusion of each half-year duly certified by a company secretary in practice or a chartered accountant in practice. Any difference between issued capital and capital as per dematerialized mode, need to be brought to the notice of the depository concerned. It should be noted that dematerialization of securities in a private company does not affect the restrictions on transfer of shares as provided in its Articles of Association. Hence any transfer of securities in a private company will continue to be restricted as per the provisions of Articles of Association. The depository and depository participant concerned have to be intimated on such restrictions and transfers ought to be permitted only with the prior approval of the Board of Directors of a private company.

Thus, with this amendment, securities of all kinds of companies, except specifically exempted companies, can be dealt only in dematerialized mode.

Dematerialization of Share Warrants by Public Company

Public companies which have issued share warrants prior to the commencement of Companies Act, 2013 and which have not been converted to shares, have to inform the RoC about the details of such share warrants in Form PAS-7 by 28th January, 2024, i.e., within three months of the publication of notice on amendment to Rule 9 of Companies (Prospectus and Allotment of Securities) Rule, 2014. Such a public company is also required to place a notice on its website in Form PAS-8 containing details about such share warrants. It is also required to publish the same in two newspapers- one in vernacular language widely circulated in the district of the company's registered office and other in English Newspaper widely circulated in the state of its registered office. The bearer of those share warrants should surrender their warrants to the company and obtain shares in dematerialised mode within six months of the amendment i.e., on or before 28th October, 2024. If the bearer of the share warrant does not surrender the warrants, then the company is required to convert such share warrants into dematerialised form and transfer them to the Investor Education and Protection Fund of the MCA.



Designate a Person to report on beneficial holdings

An amendment to Rule 9 of Companies (Management and Administration) Rules, 2014, requires a company which has members who do not hold beneficial interest in the shares to designate an officer of the company who shall be responsible for furnishing, and extending co-operation for providing, information to the RoC or any other authorised officer with respect to beneficial interest in shares of such company. In short, a company that requires to comply with provisions of Section 89 of the Companies Act, 2013 will be falling under this mandatory requirement. As per this amendment, where a company has a Company Secretary (CS), the Board of Directors (BOD) may designate either CS or any other KMP or a director as the Designated Person. Intimation of appointment of designated person shall be made in the Annual Return to be filed for the financial year 2023-2024. Until such designation, the CS of the company where there is one, or the Managing Director/ Manager or every director of the company shall be deemed to be a Designated Person who is responsible for answering enquiries from the government on beneficial holdings. Any change in designated person shall also be notified to MCA through e-form GNL-2.

The above measures have been made to provide transparency in holdings of securities in companies and to curb benami holdings and to act against money laundering.
