

Reconciliation of share capital audit report – a review

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Issue of certificates for allotment of shares and other securities were in physical formats for decades. Transfer of shares was also in physical mode and for transfer both transferor(s) and transferee(s) have to sign in the prescribed instrument in the presence of witnesses with payment of stamp duty. Tremendous growth in the capital market and participation of public increased the load of share transfers and there came the concept of appointing share transfer agents. The Securities and Exchange Board of India (SEBI)

witnessed several frauds in the transfer of shares as well as multiple complaints from shareholders about delay in transfer, loss of share certificates and so on. Besides, in unlisted smaller companies, irregular, fraudulent transfers and other disputes on transfer of shares used to be common and resulted in complaints before the Company Law Board and now the National Company Law Tribunal under the provisions of the Companies Act. The SEBI introduced the concept of dematerialisation of shares to minimise the heavy load of transfers in physical mode and also to redress the complaints of shareholders such as delay in transfer of shares, loss of share certificates. The SEBI also introduced the carrying out of audit on reconciliation of share capital once every six months. Separate International Security Identification Number (ISIN) is allotted for each kind of securities such as fully paid equity shares, partly paid equity shares and so on.

Introduction in unlisted public companies

The Ministry of Corporate Affairs ('MCA'), vide its notification dated 10th September 2018, inserted Rule 9A in the Companies (Prospectus and Allotment of Securities) Rules, 2014, (Rules) for the issue of securities in dematerialised form and dematerialisation of all existing securities by unlisted public companies, effective from 02nd October 2018. The MCA has further amended these rules vide its notification dated 22nd May 2019, effective from 30th September, 2019, requiring unlisted public companies to submit new Form PAS-6 (half yearly audit report on reconciliation of share capital) certified by a practising company secretary or practising chartered accountant. All the required information shall be furnished in Form PAS-6

within 60 days from end of each half year (30th September/ 31st March) for each ISIN separately.

However, Form PAS-6 was not available on MCA for filing. In November, 2019, the MCA has issued Circular No. 16/2019 granting extension of time limit for filing Form PAS-6 without additional fees for the half year ended on 30.09.2019 within 60 days from the date of deployment of Form PAS-6.

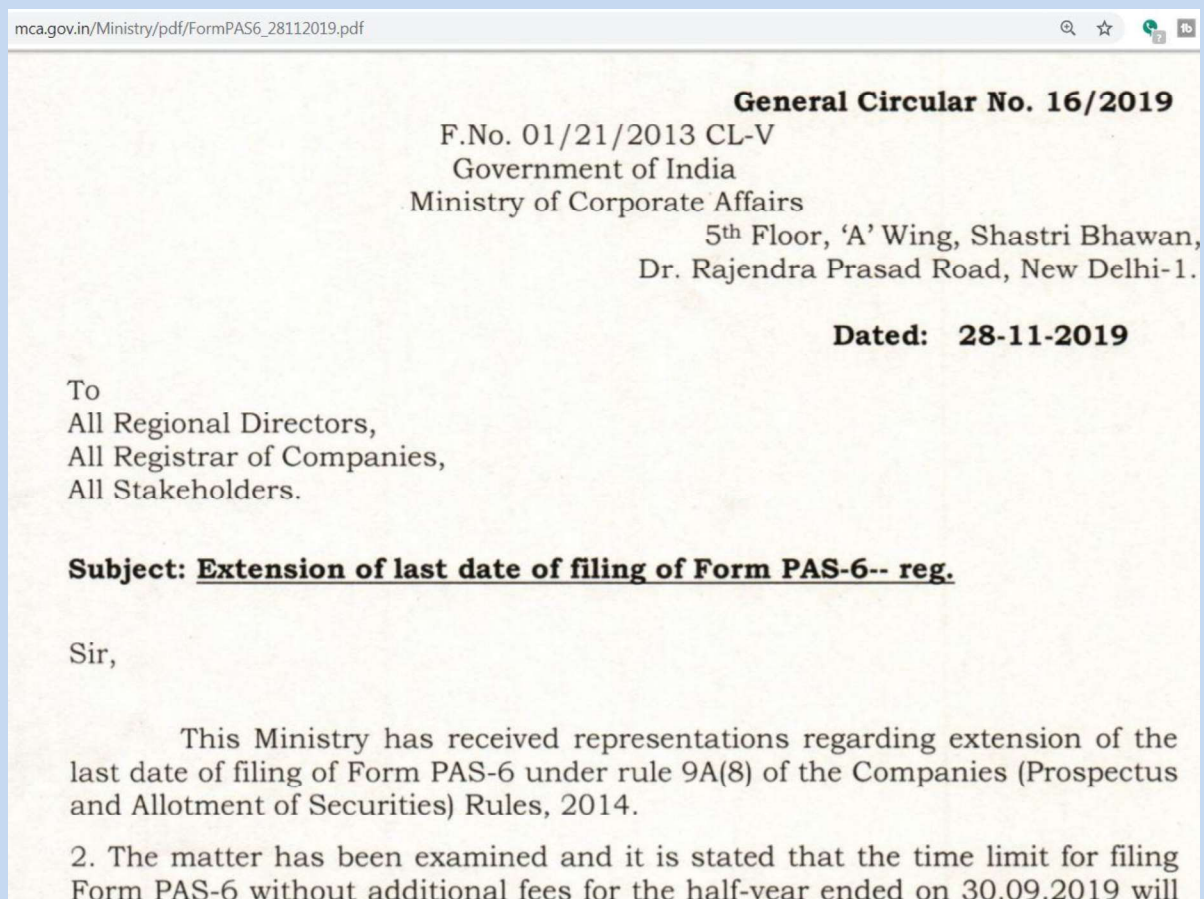
The MCA, vide its notification dated 22nd January 2019, further amended Rule 9A and inserted a new sub rule (11) giving exemption to unlisted public company which is Nidhi Company, a Government Company and a wholly-owned subsidiary from the ambit of this Rule 9A of Companies (Prospectus and Allotment of Securities), Rules, 2014.

Finally, the MCA on 15th July 2020 deployed the Form PAS-6 for filing of half-yearly reconciliation of share capital audit report on MCA Portal. This Form was deployed pursuant to sub-rule (8) of rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014.

The due date for filing Form PAS-6 is 60 days from 15th July, 2020, i.e. 13th September, 2020 for half-year ended on 30.09.2019 and 31.03.2020.

Liberal view

The present COVID-19 situation in the country keeps most of the employees in the corporate sector as well as government offices at home. The



Government also from time to time relaxed several compliances of various Acts, Rules applicable to every industry to ensure smooth running of the companies in the overall interest of all stakeholders.

1. With the introduction of Form PAS-6 companies have to file two sets of forms one for the half-year ended on September 30, 2019 and the other for half-year ended on March 31, 2020. Both the forms have to be filed on or before 13th September, 2020. Further, companies would also be required to file Form PAS-6 for the half-year ended September 30, 2020 before 30th November, 2020. The filing of form for the period ended September 30, 2019 would be out-dated and, therefore, MCA may consider and relax the requirement of filing form for September 30, 2019. This would drastically reduce the workload of the companies as well as at the office of Registrar of Companies.
2. In e-form PAS-6, all information is required to be mentioned for each ISIN. But it is possible that a company has more than one ISIN like equity with different classes/ preference shares etc. Therefore, it is suggested that the form be amended so as to enable a company to include all ISINs in a single form which would avoid filing of multiple forms by a company.

Clarifications and corrections

There are certain issues to be addressed by MCA for the sake of clarity and at the same time correction is needed in the form. Briefly:

1. Section 29 of the Companies Act, 2013 (Act) read with Rule 9A of the Rules, is applicable to “securities” whereas the prescribed Form PAS-6 is only for “shares”. Companies do issue various other securities other than shares. At present the Form PAS-6 is applicable for issued shares and not for other issued securities.
2. Rule 9A is not applicable to unlisted public company which is a nidhi company, government company, wholly-owned subsidiary, and private companies. But if a subsidiary becomes wholly-owned subsidiary and private company converts into public company, in mid of a year, or vice versa, whether the provisions of Rule 9A will be applicable in such cases is to be clarified.
3. The securities are usually admitted in depository system after allotment. It may so happen that the securities are allotted on last date of half-year and admitted in depository system after closure of the half-year. In such case, is the company required to file the Form PAS-6 for the half-year in which securities are allotted or for the half-year in which ISIN is obtained?

The MCA needs to address all the above issues at the earliest.

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