

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2023

I. BACKGROUND:

As per existing Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014 (**'Rules'**), unlisted public companies are required to provide the facilitate dematerialisation of all its existing securities and issue the securities only in dematerialised mode, inter-alia.

Ministry of Corporate Affairs (**'MCA'**) vide its notification dated October 27, 2023¹ notified and inserted Rule 9B in the existing Rules effective from the date of publication in the official gazette.

Such Rule 9B of the rules now requires the private companies also to provide the facilitate dematerialisation of all its existing securities and issue the securities only in dematerialised mode, inter-alia.

II. EFFECTIVE DATE:

This shall come into force from the date of publication in the official gazette i.e. October 28, 2023.

III. KEY HIGHLIGHTS OF THE AMENDMENT:

- (i) The Private Companies needs to comply with these amended rules within eighteen (18) months of Financial Year ended on March 31, 2023 i.e. by on or before September 30, 2024.

¹ <https://www.mca.gov.in/bin/dms/getdocument?mds=ZvNqoKdfvPrRcqeogzGdDg%253D%253D&type=open>

- (ii) The Private Company shall secure international security identification number (ISIN) for each type of securities²
- (iii) The Private Company shall facilitate dematerialization of all the existing securities.
- (iv) The Private Company shall inform to all its existing security holders about dematerialization facility.
- (v) Fresh issue of securities by the private company shall be dematerialized form after the date when it is required to comply with the amended rule i.e. by on or before 30th September, 2024.
- (vi) Dematerialization of all the existing securities of Private Company held by Promoters, Directors and Key Managerial Personnel before making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule i.e. by on or before 30th September, 2024.
- (vii) After 30th September, 2024, the transfer or subscription of the securities by any shareholder should be in dematerialization mode only
- (viii) Filing of e-Form PAS-6 within sixty (60) of each half year.

IV. APPLICABLE COMPANIES

Rule 9B of the rules shall be mandatorily applicable on following:

- (i) Private Company which are not deemed public company in terms of Section 2(71) of Companies Act, 2013;
- (ii) All Section 8 Companies incorporated as Private Company;
- (iii) Private Company being Holding Company;
- (iv) Private Company being subsidiary of another Private Company;
- (v) Private Company governed by any special Act;
- (vi) Private Company having paid up capital or turnover in excess of Rs. 4 Crore or Rs. 40 Crore, respectively as at end of financial year ended on or after 31 March, 2023

² 'Securities' is defined under Section 2(81) of the Companies Act, 2013

V. ACTIONABLES:

- (i) The board of directors should pass the necessary resolution for admission of securities in demat mode and obtaining of ISIN from NSDL or CDSL;
- (ii) The Company is required to appoint Registrar and Transfer Agent (RTA); and depository and enter into tri-party agreement with them.
- (iii) The applicable companies should ensure that the fee to depository and RTA are timely paid because without making such payments, no company shall make offer of any securities or buyback its securities or issue any bonus or right shares.
- (iv) The Company is required to file e-Form PAS-6 within 60 days of every half year immediately after obtaining ISIN for each type of securities duly certified by a company secretary in practice or chartered accountant in practice.
- (v) If the company has equity shares with multiple ISIN's, return in Form PAS-6 has to be filed for each ISIN.
- (vi) After obtaining ISIN, necessary corporate actions should be done immediately by the Company to update the latest capital structure of the Company in record of depositories for the offers which may result in change in the capital of the Company.

VI. NON-APPLICABILITY:

This Rule shall not apply to a Private Companies which is:

- (i) Small Company on last day of a financial year, ending on or after 31st March, 2023.
[Small Company means a Private Company having paid up share capital not exceeding Rs. 4 Crore and turnover not exceeding Rs. 40 Crore. Further, Section 8 Company, holding company or a subsidiary company or a company or body corporate governed by any special Act shall not be treated as Small Company;]
- (ii) Government Company
- (iii) Private Companies which are wholly owned subsidiaries of Public Companies
- (iv) Nidhi Companies

Suggestions may be sent to rupesh@cacsindia.com

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