



"TAILORING SECRETARIAL AND COMPLIANCE SERVICE SEAMLESSLY."

# DEMATERIALIZATION OF SHARES OF PUBLIC COMPANY

## ❖ APPLICABLE LAW

- Company Act, 2013
- Depositories Act, 1996

## ❖ WHAT IS DEMATERIALIZATION OF SHARES?

The process by which the physical share certificates of a company are converted to an electronic form commonly known as the dematerialization of shares. These dematerialized shares are then held in an online Demat that you open with a depository.

## ❖ COMPANY ACT, 2013

### Section 29 of the Company Act, 2013: -

- (1) Notwithstanding anything contained in any other provisions of this Act
  - (a) Every company making public offer; and
  - (b) such other class or classes of public companies as may be prescribed:

shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

In case of such class or classes of unlisted companies as may be prescribed in Rule 9A of Companies (Prospectus and Allotment of Securities) Rules, 2014, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

- (2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and the regulations made thereunder.

## ❖ IN RULE 9 OF COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014

- (1) The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised Form:

*Provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialized form only.*

- (2) Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall: -
- (a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and
  - (b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also 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 the registered office of the company is situated.
- (3) In case any bearer of share warrant does not surrender the share warrants within the period referred to in sub-rule (2), the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act.

**(1) Every unlisted public company shall :-**

- (a) Issue the securities only in dematerialized form; and
- (b) Facilitate dematerialization of all its existing securities

In accordance with provisions of the Depositories Act, 1996 and regulations made there under

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company:

- (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialized before the transfer; or
- (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

- (4) Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure International security Identification Number (ISIN) for each type of security and shall in-form all its existing security holders about such facility.
  
- (5) Every unlisted public company shall ensure that.
  - (a) It makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
  - (b) It maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and
  - (c) It complies with the regulations or directions or guidelines or circulars, if any, issued by the securities and Exchange Board or Depository from time to time with respect to dematerialization of shares of unlisted public companies and matters incidental or related thereto.

- (6) No unlisted public company which has defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
- (7) Except as provided in sub-rule (8), the provisions of the Depositories Act 1996 the securities and Exchange Board of India (Depositories and participants) Regulations, 2018 and the securities and Exchange Board of India (Registrars to an Issue and share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialization of securities of unlisted public companies.
- (8) Every unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules,2014 within sixty days from the conclusion. Of each half year duly certified by a company secretary in practice or chartered accountant in practice.
- (8A)The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialized form.
- (9) The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and protection Fund Authority.
- (10)The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

**(11) This rule shall not apply to an unlisted public company which is: -**

**(a) *a Nidhi;***

**(b) *a government company or***

**(c) *a wholly owned subsidiary.***

# DEMATERIALIZATION OF SHARES OF PRIVATE COMPANIES

## ❖ ISSUE OF SECURITIES IN DEMATERIALIZED FORM BY PRIVATE COMPANIES: -

### • Rule 9B of the Companies (Prospectus and Allotment of Securities) Rules, 2023: -

(1) Every private company, other than a small company, shall within the period referred to in sub-rule (2) –

(a) issue the securities only in dematerialised form; and

(a) facilitate dematerialisation of all its securities,

In accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

(2) A private company, which as on last day of a financial year, ending on or after 31st March, 2024, is not a small company as per audited financial statements for such financial year, shall, **within eighteen months of closure of such financial year**, comply with the provisions of this rule.

(3) Every private company referred to in sub-rule (2) 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, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.

- (4) Every holder of securities of the private company referred to in sub-rule (2), -
- (a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialized before the transfer; or
  - (b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialized form before such subscription.
- (5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialization of securities under this rule.
- (6) The provisions of this rule shall not apply in case of a Government company.

## ❖ What is Small Company in India?

The Companies Act, 2013 ('Act') introduced the concept of small companies to provide advantages for small businesses operating private limited companies. Small companies have less annual revenue compared to regular-sized companies.

Small companies do not have any separate procedure to obtain registration under the Act. It is registered as a private limited company. But the Act differentiates a private company as a small company based on its less amount of investment and turnover.

**Under Section 2(85) of the Company Act, 2013 “small company” means a company, other than a public company, —**

- (i) paid-up share capital equal to or below Rs. 4 Crore or such higher amount specified not exceed more than Rs.10 Crore and**
- (ii) Turnover of which [as per profit and loss account for the immediately preceding financial year] equal to or below Rs.40 Crore or specified not exceed more than 100 Crore**

**Provided that nothing in this clause shall apply to: -**

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

## ❖ RAMIFICATION OF NON-COMPLIANCE

There are no specific provisions addressing non-compliance with Section 29 of the Act, as read with Rule 9A / 9B of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023. Therefore, the general penalty provisions outlined in Section 450 of the Act would apply.

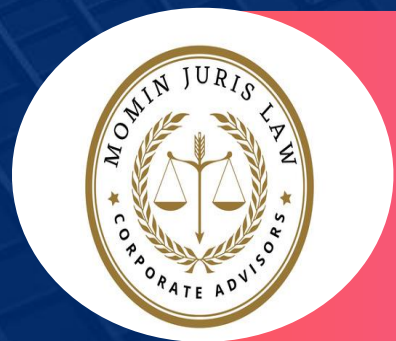
Section 450 states that if a company, its officers, or any other person violates any provision of the Act, the associated rules, or any conditions, limitations, or restrictions tied to approvals, sanctions, consents, confirmations, recognitions, directions, or exemptions, and if no other penalty or punishment is specified within the Act, then the following penalties apply:

- A penalty of **ten thousand rupees** for the company, every officer in default, or such other person.
- In the case of a continuing violation, an additional penalty of **one thousand rupees per day** after the first day of contravention will be imposed, up to a maximum of **two lakh rupees for a company** and **fifty thousand rupees for an officer** in default or any other person.

## ❖ CONCLUSION

The purpose of this mandate is to combat black money and accurately identify the true owners of shares. Dematerialization will help the government achieve greater transparency, enabling real-time tracking of share ownership. However, many legitimate security holders who prefer to keep their shares in physical form may be displeased with this requirement. It will be interesting to observe how companies manage this transition and how security holders adapt to and comply with the new regulations.

# Thank You



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