



COMPULSORY DEMATERIALIZATION OF SHARES OF UNLISTED PUBLIC COMPANY

FCS, Kashif Ali

Ministry of Corporate Affairs has vide its notification dated 10th September 2018 has amended the “the Companies(Prospectus and Allotment of Securities) Rules, 2014, by inserting a new rule 9A after existing rule 9. This amendment is applicable from 2nd October 2018.

This new rule talks about compulsory dematerialization of shares of all public companies. As on June 2018 there are approx 11.86 lakh companies out of which approx 70,000 are public Companies.

Our team has analyzed the said notification and providing you whole report in the following points;

1. COMPANY SHALL ISSUE NEW SECURITIES ONLY IN DEMAT FORM

As per sub rule (1) of Rule 9A of Companies(Prospectus and Allotment of Securities) Third Amendment Rules, 2018 a every unlisted public company shall issue of securities only in dematerialized form.



Therefore after coming into effect of this rule i.e. 2nd October 2018, a unlisted public company cannot issue securities in “Physical form” .

2. RESTRICTION ON ISSUE OF NEW SECURITIES

Sub rule (2) of Rule 9A of Companies(PAS) Rules, 2018 imposed a restriction on all unlisted public companies which is as follow:



An unlisted public company shall not **offer for**

1. issue of securities or
2. buyback of Securities or
3. issue of bonus shares or
4. right offer

Unless before making such offer, entire holding of securities of its

- a. promoters,
- b. directors,
- c. key managerial personnel

has been dematerialization in accordance with provisions of the Depositories Ac 1996 and regulations made there under.

Therefore, before planning for issue of new securities or before buyback, a unlisted public company need to have all its securities of its promoter. Director and KMP in Demat form.

3. “PHYSICAL SECURITIES” CANNOT BE TRANSFERRED



After coming into effect of this rule, i.e. after 2nd October 2018 a physical security holder cannot transfer his securities unless it's converted into demat form. Sub rule (3) of Rule 9A of the Companies(PAS) Rules, 2018 put this restriction.

4. PHYSICAL SECURITIES” HOLDER CANNOT SUBSCRIBE NEW SECURITIES UNLESS ALL EXISTING SECURITIES ARE DEMATERIALIZED

As per sub rule (3) of Rule 9A of the “Companies(PAS) Rules, 2018” , physical security holder must ensure that all that all his existing securities are herd in dematerialized form before subscription to any securities of an unristed public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October,2018.



5. COMPANY SHALL PROVIDE FACILITATE OF DEMAT

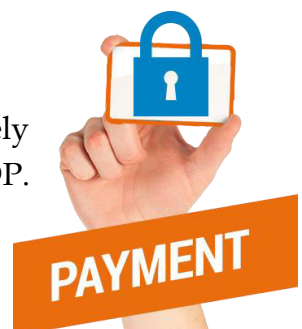
A company must facilitate dematerialization of all it existing securities by making necessary



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.

6. COMPANY SHALL MAKE TIMELY PAYMENT TO “RTA” AND MAINTAIN SECURITY DEPOSIT WITH “DP”

Interestingly, these rules ensure that company make timely payment to RTA and maintain a security deposit with DP. As per sub rule (5) of Rules 9A of “Companies(PAS) Rules, 2018” 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.

7. COMPANY CANNOT ISSUE/BUYBACK SECURITIES IF FAILS TO COMPLY SUB RULE (5)

Sub rule (6) talk about of the consequences if company fails to comply with the rule (5). As per this rule unlisted public company who fails to comply with rule (5) shall not 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.



8. APPLICABILITY OF CERTAIN ACT AND REGULATIONS

As per rule (7) "Except as provided in sub-rule (s), the provisions of the Depositories Act 1996' the securities and Exchange Board of India (Depositories and participants) Regulations, 1996 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.



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9. COMPANY TO OBTAIN 'HALF YEARLY AUDIT REPORT'

Earlier only listed companies were required to obtain Audit Certificate from a CS of CA. Henceforth all unlisted public Companies shall require the audit report provided under regulation 55A of the securities and Exchange Board of India (Depositories and participants) Regulations, 1996.

Moreover, this Audit Report need to be submitted by the unlisted public company on a half-yearly basis **to the Registrar under whose jurisdiction the registered office of the company is situated.**

AUTHORITY TO HANDEL GRIEVANCES

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.

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.

Frequently asked Questions (FAQ)

1. IS THERE ANY LAST DATE TO COMPLY?

There is no last date mentioned in the Act, or amended rules. However following points must kept in mind

- a. As per sub rule (3) of rules 9A, an existing security holder cannot transfer his security unless it is in demat form. To convert the security into Demat there must be ISIN number of that security. Therefore a company must obtain ISIN number of each type of securities as soon as possible.
- b. As per sub rule (8) of the rule 9A, the company must obtain a, half yearly "Reconciliation of Share Capital Audit Report" form a CS or CA and submit it with ROC. The first half year will end on 31st March 2018. Therefore before audit the shares must be in Demat form.
- c. Moreover, a company cannot issue fresh securities unless shares of its directors, KMP and promoters are in Demat form. Hence before planning for any new issue the company must get its shares in Demat form.
- d. As per sub rule (8) of the rule 9A, the company must obtain a, half yearly "Reconciliation of Share Capital Audit Report" form a CS or CA and submit it with ROC. The first half year will end on 31st March 2018. Therefore before audit the shares must be in Demat form.

2. WHAT IS AUDIT REPORT UNDER REGULATION 55A OF SECURITIES AND EXCHANGE BOARD OF INDIA (DEPOSITORY AND PARTICIPANTS) REGULATIONS, 1996

SEBI authorizes practicing Company Secretaries and practicing chartered accountants to undertake Reconciliation of Share Capital Audit to certify reconciliation of total shares of a company held in

NSDL, CDSL and in physical form by the shareholders with the total admitted, issued and listed capital.

Regulation 55A (1) of SEBI (Depositories and Participants) Regulations, 1996, requires every issuer to submit to the Stock Exchanges, audit report by a practicing company secretary or qualified chartered accountant on a quarterly basis, for the purposes of reconciliation of the total issued capital, listed capital and capital held by depositories in dematerialized form, the details of changes in share capital during the quarter and in principle approval obtained by the issuer from all stock exchanges where it is listed in respect of such further issued capital.

Sub-regulation (2) lays down that the audit report under subregulation (1) shall also give the updated status of the register of members of the issuer and confirm that security have been dematerialized as per requests within 21 days from the date of receipt of request by the issuer and where the dematerialisation has not been effected within the said stipulated period, the report shall disclose the reasons for such delay.

Further, sub-regulation (3) provides that the issuer shall immediately bring to the notice of the depositories and the stock exchanges, any difference observed in its issued, listed, and the capital held by depositories in dematerialized form.

The format of audit report is given in Annexure-A

3. WHAT IS ISIN NUMBER?

Format of ISIN

Know Your ISIN



ISIN or International Securities Identification Number is a 12 character alpha-numeric code that uniquely identifies a security, across the world.

ISIN constitutes of three parts. It starts with a two letter country code. The following is ISIN of Bharti Airtel

IN-E397D0102-4

In the case of Bharti Airtel the country code is IN (India). The country code is followed by a nine character alpha-numeric national security identification code assigned to a security by the governing bodies in each country. In the case of Bharti Airtel, the national security identification code is 'E397D0102'. This is followed by a single character check digit, which will validate the ISIN code.

4. HOW TO OBTAIN ISIN AND INITIATE DEMATERIALIZATION OF SECURITIES

The best way is to initiate the Dematerialization process is to appoint any registered RTA and Depository. Normally all depository have their own RTA. You can contact us for finding best RTA & DP in Delhi & NCR. They will take up the whole assignment and will help you in all compliances whether it obtaining ISIN or opening of Demat account.

To know more visit <http://www.isin.org/india-isin/>

The company must need to choose the RTA first before applying for ISIN because to apply ISIN consent of RTA is mandatory document.

5. WHO IS DEPOSITORY ?

Depository is a place where financial securities are held in dematerialised form. It is responsible for maintenance of ownership records and facilitation of trading in dematerialization securities.

However, a Depository Participant (DP) is described as an Agent (law) of the depository. They are the intermediaries between the depository and the investors.

The relationship between the DPs and the depository is governed by an agreement made between the two under the Depositories Act. In a strictly legal sense, a DP is an entity who is registered as such with SEBI under the sub section 1A of Section 12 of the SEBI Act.

As per the provisions of this Act, a DP can offer depository-related services only after obtaining a certificate of registration from SEBI.

There are two depositories which are functional in India – National Securities Depository Ltd (NSDL) and Central Securities Depository Ltd (CDSL). Various Depository Participants linked to each one of them in India. All the details in form of electronic records of equity and debt are kept there.

You can find the list of DP associated with NSDL from the following link

<https://nsdl.co.in/related/deprt.php>

You can find the list of DP associated with CDSL from the following link;

<https://www.cdslindia.com/dp/dplist.aspx>

6. WHO IS RTA ?

‘Registrar and Share transfer agent’ is an agent who, on behalf of the body corporate, maintains recorders of holders of securities issued by such body corporate and deals with the processes of transfer and redemption of securities

Investors' transactions like buying, exchanges, processing of mails and related information, changes in personal data, etc occur frequently and have to be recorded. Registrar & transfer agents have skilled expertise for maintenance of such data on a professional basis, thereby contributing to saving costs and time involved in keeping detailed accurate records of the investor transactions.

1. List of NSDL RTA

<https://nsdl.co.in/related/regtrf.php>

2. List of CDSDL RTA

<https://www.cdslindia.com/rta/rta-list.aspx>

Please feel free to write us for any query of clarification, we would love to answer your queries.

**For Kashif Ali & Associates
(Company Secretaries)**

**Kashif Ali
(FCS, LL.B, M.Com)
Office: C-100, New Friends Colony,
Near Sukhdev Vihar Metro Station
Sarai Julena, New Delhi-11025
Contact: 011-41580090 9718483209**

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