



Tax alert: Dematerialisation of Securities by Private Companies, etc.

1 November 2023

Ministry of Corporate Affairs has introduced rules for dematerialisation of securities by private companies and issue of dematerialised shares against share warrants by all public companies.

In a nutshell



Public companies which have issued share warrants prior to commencement of Companies Act, 2013 and which are not converted into shares as on 27 October 2023, shall issue dematerialised shares on surrender of those warrants by the warrant holders or transfer the warrants to Investor Education and Protection Fund



Private companies to dematerialise their existing securities within a period of 18 months from closure of FY ending on or after 31 March 2023 and issue new securities only in dematerialised form



Small companies and Government companies are exempted to comply with the requirement of mandatory dematerialisation



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Ministry of Corporate Affairs (MCA) has, on 27 October 2023, notified Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 wherein it has introduced following changes with respect to dematerialisation of securities:

- **Share Warrants:**

Public companies which have issued share warrants prior to commencement of Companies Act, 2013 and where such share warrants are not converted into shares, such company shall ensure the following:

Timeline	Action
Within 3 months from 27 October 2023	Inform Registrar of Companies (RoC) about the details of such share warrants in Form PAS-7
Within 6 months from 27 October 2023	<ul style="list-style-type: none"> — Require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account — Issue notice in Form PAS-8 and publish the same on its website (if any) — Publish notice in a vernacular language newspaper and English language newspaper
Post 6 months from 27 October 2023	— The company shall convert such share warrants not surrendered by the holders into dematerialised form and transfer the same to the Investor Education and Protection Fund (IEPF)

Dematerialisation of securities by private company

Applicability of provisions:

A private company (which is not a small company as on last day of the financial year, ending on or after 31 March 2023), shall within 18 months from closure of such financial year, need to:

- issue the securities only in dematerialised form; and
- facilitate dematerialisation of all its securities

Fresh issue / Buy-back of securities:

A private company which is required to dematerialise its securities as above, shall ensure that before making the following offers, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised

- Fresh issue / offer of any securities
- Buyback of securities
- Bonus shares
- Rights offer

Transfer of securities:

On or after 18 months from the date of applicability of dematerialisation provisions to a private company, the holders of securities of private company shall ensure the following:

- Transfer of shares in dematerialised form only
- Prior to subscribing to the shares of such private company, all their securities are held in dematerialised form before such subscription

Other Key Requirements:

Private companies are *inter alia* required to:

- Make timely payment of fees for demat;
- Not issue fresh securities / buy-back securities etc. in case securities are not dematerialised;
- File half yearly certificate in form PAS-6 with Registrar of Companies within 60 days of each half year;
- Deposit two years' fees as security deposit with Depository / Registrar and Share Transfer Agent.

Exception:

Above provisions on mandatory dematerialisation of securities by private companies are not applicable to small companies and Government company.

Small company means a company, other than a public company, whose paid-up share capital is less than or equal to (<=) ₹ 40 million and turnover as per the last financial year is less than or equal to (<=) ₹ 400 million. Following are not considered as small company viz.

- Holding company or a subsidiary company
- Section 8 company
- Company/ body corporate governed by any special Act

Conclusion:

The above amendments are in furtherance to MCA notification issued on 10 September 2018 which was applicable only to public companies. Extending the applicability to private companies would facilitate tracking of ownership of securities on real time basis, enhance transparency, protect investors, and improve governance in the corporate sector.

Above amendments are applicable to 'securities' i.e., shares (equity / preference), debentures and other securities.

From an M&A standpoint, the above will have to be factored in any M&A transactions at the planning stage.

Source: Notification no. G.S.R. 802(E) issued by MCA on Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 dated 27 October 2023.



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