

Article

FAQs on Dematerialization of Shares

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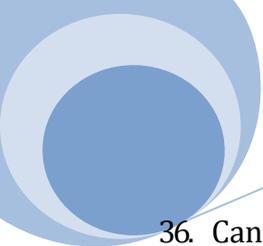
FAQs on Dematerialization of Shares

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FAQs on Dematerialization of Shares

MCA vide its Notification¹ dated September 10, 2018 has issued Companies (Prospectus and Allotment of Securities) (Third Amendment) Rules, 2018 ('Amendment Rules') pursuant to power under Section 29 (1) (b) of the Companies Act, 2013 ('Act') by inserting Rule 9A dealing with issue of securities in demat form by Unlisted Public Companies ('UPCs').

As per the Amendment Rules, every unlisted public company shall issue securities only in demat form and will facilitate dematerialization of all its existing securities. In this regard, the following FAQs provides answer to the various questions relating to the process of dematerialization of securities.

1. What is dematerialization?

Dematerialization is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form.

2. Which all companies are required to comply with the provisions of Rule 9A of Amendment Rules?

The provisions are applicable to all unlisted public companies.

3. Does Rule 9A of the Amendment Rules apply to debentures, preference shares, equity shares, other securities too?

Rule 9A of the Amendment Rules provides for Issue of Securities in demat form by unlisted companies.

In order to check applicability of aforementioned rules on debentures, preference shares and other securities, we refer to the definition of Securities as mentioned in Securities Contracts (Regulations) Act, 1956

*As per regulation 2(h) of the Securities Contracts (Regulations) Act, 1956 "securities" include—
(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

Hence the scope of the definition of securities include debentures, preference shares and other securities too.

¹ http://www.mca.gov.in/Ministry/pdf/CompaniesProspectus3amdRule_10092018.pdf

4. Which all companies are not required to comply mandatory dematerialization?

Where a public company has listed any of its securities, such as: equity, debentures, preference shares, shall not be covered by the Amendment Rules.

Pl refer our article on the same²

5. What is an ISIN?

ISIN (International Securities Identification Number) is a unique 12 digit alphanumeric identification number allotted for a security (e.g.- INE383C01018). Equity fully paid up, equity-partly paid up, equity with differential voting /dividend rights issued by the same issuer will have different ISINs.

6. Who is a Registrar and Transfer Agent (RTA)?

An RTA is an agent of the issuer. RTA acts as an intermediary between the issuer and depository for providing services such as dematerialization, rematerialization, initial public offers (IPO) and corporate actions.

7. What are different types of depositories?

A depository is responsible for holding the securities of a shareholder in the electronic form. These securities could be in the form of bonds, government securities and mutual fund units, which are held by a registered Depository Participant (DP). Currently there are two Depositories registered with SEBI:

- National Securities Depository Limited (NSDL) and the other
- Central Depository Service (India) Limited (CDSL).

A DP is the agent of the depository providing depository services to traders and investors.

8. What is the process of getting ISIN?

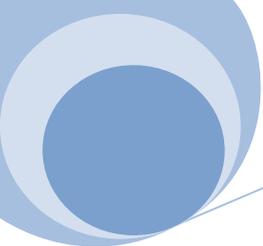
➤ CDSL³:

Procedure for admission of Equity/Preference Shares with CDSL

1. The company should submit the certified true copy(ies) of the following document(s) along with the payment to CDSL:

² <http://vinodkothari.com/blog/physical-to-demat-a-move-from-opacity-to-transparency/>

³ <https://www.cdslindia.com/issuer/issuer-joiningpro.html>



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- Payment towards Processing & Annual Issuer Charges⁴ through NEFT⁵/Demand draft favouring 'Central Depository Services (India) Limited'.
- ⁶Tri-partite (instructions for franking and e-stamping / on stamp paper) or bi-partite agreement should be executed with CDSL in triplicates with one original and two copies of the original agreement with ORIGINAL SIGNATURES AND RUBBER STAMP on it. Stamp duty payable on agreements will be Rs. 600/- if executed in the State of Maharashtra.

Please do not mention the date of the agreement. The date of execution of agreement will be entered by CDSL, after obtaining necessary approvals for admitting the company. If the agreement is received with the date mentioned on it, same would be rejected and issuer, RTA has to execute new agreement.

- ⁷Master Creation Form.
- Soft copy of security details in prescribed format⁸ (Equity / Preference Shares).
- Board Resolution for admission of securities with CDSL mentioning the details about authorized signatory(ies) and appointment of RTA, if any.
- Capital Confirmation/Listing Certificate(s)/In-principle Approval(s) of Listing, from the Stock Exchange(s) where the security is Listed/Proposed to be Listed – Applicable in case of Listed Company.
- Undertaking-cum-Indemnity (for franking⁹ / on stamp paper¹⁰) should be submitted. Applicable in case of an Unlisted Companies. Stamp duty payable on Undertaking-cum-Indemnity will be Rs.500/- if executed in the state of Maharashtra. If executed in other states, stamp duty payable in the respective states will be applicable.
- Declaration from Issuer & RTA¹¹ confirming Electronic and Physical Connectivity – Applicable and MANDATORY in case of Listed Company.
- Latest Reconciliation of Share Capital Audit Report – Applicable in case of Listed Company.

⁴ <https://www.cdslindia.com/issuer/charges.html>

⁵ <https://www.cdslindia.com/downloads/forms/NEFT%20RTGS%20FORM.DOC>

⁶ <https://www.cdslindia.com/downloads/forms/Tripartite-Agreement-For-Franking-and-e-stamping.pdf>

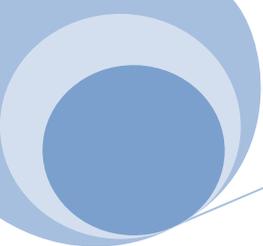
⁷ <https://www.cdslindia.com/issuer/issuer-joiningpro.html>

⁸ https://www.cdslindia.com/downloads/forms/Security_Details_Preference_Shares.xlsx

⁹ <https://www.cdslindia.com/downloads/forms/Undertaking-cum-Indemnity-Franking.pdf>

¹⁰ <https://www.cdslindia.com/downloads/forms/Undertaking-cum-Indemnity-Franking.pdf>

¹¹ <https://www.cdslindia.com/downloads/forms/Undertaking-cum-Indemnity-Franking.pdf>



FAQs on Dematerialization of Shares

- Letter for freezing/unfreezing of securities¹² – Applicable in case of Private Limited Company.
- Annual Report for the last financial year
- Memorandum & Articles of Association along with Certificate of Incorporation.

Procedure for admission of Debenture/Bond, Warrant & PTC with CDSL

1. If the company has already entered into an agreement with CDSL, forward the following documents:

- Master Creation Form (Part - B)¹³ for Debenture / Bond / PTC - duly filled, signed and stamped on every page along with the letter of extension¹⁴ on non-judicial stamp paper of 100 (INR)
- Soft copy of security details in Prescribed Format¹⁵ for Debenture / Bond / PTC.

2. If the company has NOT entered into an agreement with CDSL, forward the following documents:

- Payment towards Processing & Annual Issuer Charges¹⁶ through NEFT/ Demand draft favouring 'Central Depository Services (India) Limited'.
- Tri-partite (for franking and e-stamping¹⁷ / on stamp paper¹⁸) or bi-partite (for franking and e-stamping¹⁹ / on stamp paper²⁰) agreement should be executed with CDSL in triplicates with one original and two copies of the original agreement with ORIGINAL SIGNATURES AND RUBBER STAMP on it. Stamp duty payable on agreements will be Rs.600/- if executed in the state of Maharashtra.

Please do not mention the date on the agreement. The date of execution of agreement will be entered by CDSL, after obtaining necessary approvals for admitting the company. If the agreement is received with the date mentioned on it, same would be rejected and issuer, RTA has to execute new agreement.

¹² <https://www.cdslindia.com/downloads/forms/Declaration-for-Freeze-Unfreeze-of-ISIN.pdf>

¹³ <https://www.cdslindia.com/issuer/issuer-joiningpro.html>

¹⁴ [https://www.cdslindia.com/downloads/forms/Letter%20of%20Extension%20\(in%20place%20of%20agreement\).doc](https://www.cdslindia.com/downloads/forms/Letter%20of%20Extension%20(in%20place%20of%20agreement).doc)

¹⁵ https://www.cdslindia.com/downloads/forms/Security-Details-For-CorporateBonds_Debentures.xlsx

¹⁶ <https://www.cdslindia.com/issuer/charges.html>

¹⁷ [https://www.cdslindia.com/downloads/forms/Tripartite-Agreement-For-Franking-and-e-stamping\(1\).pdf](https://www.cdslindia.com/downloads/forms/Tripartite-Agreement-For-Franking-and-e-stamping(1).pdf)

¹⁸ [https://www.cdslindia.com/downloads/forms/Tripartite-Agreement-On-Stamp-Paper\(1\).pdf](https://www.cdslindia.com/downloads/forms/Tripartite-Agreement-On-Stamp-Paper(1).pdf)

¹⁹ [https://www.cdslindia.com/downloads/forms/Bi-Partite-Agreement-%20For-Franking-and-e-stamping\(1\).pdf](https://www.cdslindia.com/downloads/forms/Bi-Partite-Agreement-%20For-Franking-and-e-stamping(1).pdf)

²⁰ [https://www.cdslindia.com/downloads/forms/Bi-Partite-Agreement-On-Stamp-Paper\(1\).pdf](https://www.cdslindia.com/downloads/forms/Bi-Partite-Agreement-On-Stamp-Paper(1).pdf)

- Master Creation Form (MCF)²¹ for Debenture / Bond / PTC
- Soft copy of security details in Prescribed Format²² for Debenture / Bond / PTC.
- Certified true copy of the listing certificate/in-principle listing certificate, in case debt instruments are listed/proposed to be listed on stock exchanges.
- Board Resolution²³ for admission of securities with CDSL mentioning the details about authorized signatory(ies) and appointment of RTA, if any.
- Annual Report for the last financial year.
- Memorandum & Articles of Association along with Certificate of Incorporation.
- ²⁴Annexure for Private Placement of Debenture

➤ **NSDL:**

Procedure for admission of Equity/Preference Shares with NSDL

An Issuer may offer demat facility to its shareholders by admitting the securities in NSDL. Issuer should obtain electronic connectivity with the existing Registrar & Transfer Agent (R&T Agent) or by obtaining In-House connectivity.

- **List of documents required**

1. Application for admission as Issuer of Eligible Securities (**Part I - Issuer Details and Part II - Security Details for Equity Shares**)²⁵
2. Networth certificate from a Chartered Accountant as per audited annual report for the last financial year. (**format enclosed**²⁶)
3. Certified true copy of Board Resolution mentioning name of signatories who are authorized by Board to execute documents and list of Authorised Signatories along with specimen signature.
4. Confirmation letter from Registrar & Transfer Agent (R&T Agent). (**format enclosed**²⁷)

²¹ [https://www.cdslindia.com/downloads/forms/MCF-PartA_B-For-Corporate-Bonds-Debentures\(1\).docx](https://www.cdslindia.com/downloads/forms/MCF-PartA_B-For-Corporate-Bonds-Debentures(1).docx)

²² https://www.cdslindia.com/downloads/forms/Security-Details-For-CorporateBonds_Debentures.xlsx

²³ <https://www.cdslindia.com/downloads/forms/BoardResolution-Sugg-Format.docx>

²⁴ <https://www.cdslindia.com/downloads/forms/Annexure-Private%20Placement%20of%20Debenture.docx>

²⁵ <https://nsdl.co.in/downloadables/word/Part%20II-Security%20Details%20for%20Equity%20Shares.doc>

²⁶ <https://nsdl.co.in/downloadables/word/Networth%20Certificate.doc>

²⁷ <https://nsdl.co.in/downloadables/word/Confirmation%20letter%20from%20RTA.doc>

5. Certified true copies of Memorandum & Articles of Association along with Certificate of Incorporation.
6. Certified true copy of Audited annual report for the last financial year.
7. If company has issued equity shares after latest balance sheet in that case company has to provide us certified true copy of PAS-3.
8. If there is any variation in face value of shares or reduction in capital after the last balance sheet date in that case company has to provide certified true copy of SH-7.

- **Additional Documents for Private Limited Companies**

9. Undertaking from company²⁸ (Click here to view the [format](#))

- **Additional documents for listed companies**

10. Copies of listing/trading permission/confirmation letter received from the stock exchanges with Distinctive Number Range (DNR) for listing of all its shares.
11. Copy of the latest Reconciliation of Share Capital Audit Report submitted to the stock exchanges.

- **Notes:**

1. After submitting the requisite set of documents to NSDL, NSDL will send blank copies of Tripartite Agreement (3 copies with franking of Rs 200/- each) to the R&T Agent. The 3 copies of agreement should be sent to NSDL after signing by R&T Agent & Issuer.

ISIN (International Securities Identification Number) generated by NSDL for the security will be conveyed to the Issuer.

2. Main business activity and code details of the company registered with MCA needs to be provided in the Application for admission as Issuer of Eligible Securities. The details of main business activity and code are available in the Instruction Kit for eForm SPICe (INC-32) on the **MCA website**²⁹.
3. **About Legal Entity Identifier (LEI): The Legal Entity Identifier (LEI)**³⁰ is a 20- digit, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). LEI is a global reference number that uniquely identifies every legal entity or structure that is party to a financial transaction, in any jurisdiction.

²⁸ <https://nsdl.co.in/downloadables/word/Undertaking.doc>

²⁹ <http://www.mca.gov.in/MinistryV2/companyformsdownload.html>

³⁰ <https://nsdl.co.in/downloadables/word/About%20LEI.doc>

9. Who is required to apply for dematerialization, company or the respective shareholder?

The Company shall make an application for admission of securities and to secure International security Identification Number (ISIN) with a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 and shall secure ISIN for each type of security and shall inform all its existing security holders about such facility.

The shareholders who wish to avail the same shall submit a Demat request form. Further respective shareholders have to separately follow the process of getting shares dematerialized. Refer FAQ no.10 for the same.

10. What is the process of getting demat shares?³¹

There are two depositories viz. are two types of depositories viz. National Security Depository Limited and Central Depository Services Limited. The process to be undertaken with both the depositories is mentioned below:

1. The Registered shareholder has to open a demat account with a depository participant.
2. The registered owner will submit a request to the DP in the Demat request form for dematerialization, along with the certificates of securities to be dematerialised. Before submission, the client has to deface the certificates by writing "SURRENDERED FOR DEMATERIALIZATION".

The DP will verify that the form is duly filled in and the number of certificates, number of securities and the security type (equity, debenture etc.) are as given in the DRF. If the form and security count is in order, the DP will issue an acknowledgement slip duly signed and stamped, to the client.

The DP will scrutinize the form and the certificates. This scrutiny involves the following

- Verification of Client's signature on the dematerialization request with the specimen signature (the signature on the account opening form). If the signature differs, the DP should ensure the identity of the client.
- Compare the names on DRF and certificates with the client account.
- Paid up status
- ISIN (International Securities Identification Number)
- Lock - in status
- Distinctive numbers

³¹ <https://nsdl.co.in/services/demat.php>

In case the securities are in order, the details of the request as mentioned in the form are entered in the DPM (software provided by NSDL/CDSL to the DP) and a Dematerialization Request Number (DRN) will be generated by the system.

3. The DRN so generated is entered in the space provided for the purpose in the dematerialization request form.
4. A person other than the person who entered the data is expected to verify details recorded for the DRN. The request is then released by the DP which is forwarded electronically to DM (DM - Depository Module) by DPM.
5. The DM forwards the request to the Issuer/ R&T agent electronically.
6. The DP will fill the relevant portion viz., the authorisation portion of the demat request form.
7. The DP will punch the certificates on the company name so that it does not destroy any material information on the certificate.
8. The Issuer/ R&T agent confirms acceptance of the request for dematerialization in his system DPM and the same will be forwarded to the DM, if the request is found in order.
9. The DM will electronically authorise the creation of appropriate credit balances in the client's account.
10. The DPM will credit the client's account automatically.

11. How much time does it take to process Demat request?

This cycle takes about 15 to 30 days after the submission of dematerialization request.

12. What is the process of opening Demat account?

The process of opening of DEMAT account is similar to that of opening of Bank account.

11. The investor must first choose a DP as per based on his convenience and the DP's charges.
12. The investor³² has to fill up the KYC form and attach the documents with it as per SEBI guidelines specified in SEBI circular MIRSD/SE/Cir/21/2011 dated October 5, 2011 and circulars issued by KRA agencies from time to time.

³² https://www.sebi.gov.in/sebi_data/attachdocs/1317809779732.pdf

13. The investor also has to submit a completely filled, signed 'Additional KYC form for opening a Demat Account' as prescribed by NSDL/CDSL along with proof of correspondence address.
14. Before opening the demat account, the investor will have to submit the duly signed "Rights and Obligations of Beneficial Owner and Depository Participant" to the Depository Participant on opening a demat account, a unique Beneficial Owner Identification (BO ID) Number is allotted to the demat account, which should be quoted in all future transactions.
15. The last step is the allocation of the Beneficiary ID (demat account number) once all the documents are in place and verified. The DP id and the Beneficiary id combined becomes your unique DP code for all future transactions, IPO applications etc. Demat account can only hold shares in custody investors still need a trading account with a broker to buy and sell shares.

13. Is there a stamp duty also to be paid at the time of initial transaction for demat?

As per Rule 8A of the Indian Stamp Act, 1899:

"Notwithstanding anything contained in this Act or any other law for the time being (a)An issuer, by the securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;"

On reading the section 8A of Indian Stamp Act, 1899 and the explanation thereof, it clearly states that as soon as the Company or issuer issues the securities to their respective depositories the same will be chargeable with duty on the total amount of security issued by it and the said section nowhere specifically said that the shares issued in physical form are only chargeable to stamp duty or share issued in demat form are not chargeable to stamp duty.

Further stamp duty is payable at the time of issue of shares as per the provisions of the Stamp Act, 1899, there is no stamp duty payable on initial transaction for demat of shares

14. What is the fee payable by the Issuer for Joining NSDL and CDSL?

The fees are to be paid by the issuer for joining NSDL and CDSL are provided in table below

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Processing Fees	NSDL	An Issuer of unlisted securities shall pay a joining fee of Rs. 15,000 ¹ plus taxes at the applicable rate at the time of joining NSDL, for the purpose of making its shares available for dematerialization. Provided however that in case the Issuer gets its securities listed on any recognised stock exchange within one year of joining NSDL, the joining fee paid by the Issuer will get adjusted against the one time custody fee or Annual Custody Fee, as the case may be. Further, issuer of listed securities shall pay a joining fee of Rs. 20,000 plus taxes at the applicable rate at the time of joining NSDL	
	CDSL	A non-refundable processing fee of Rs. 20,000 (INR) plus applicable taxes, shall be payable by Issuers for admission of listed companies and for unlisted companies (processing fees) shall be Rs.15,000 plus applicable taxes	
Annual Custodian Fees	NSDL CDSL	The annual custody fee payable by Issuers are based on the greater of 11.00(INR) per folio (ISIN position) in the depository or the nominal value of admitted securities as per the table mentioned below:	
		Nominal Value of admitted securities (INR)	Annual Custodial Fee Payable by an Issuer to the Depository (INR)
		Upto 2.5 crore ² (applicable for issuer of unlisted shares)	5,000
		Upto 5 crore	9,000
		Above 5 crore and upto 10 crore	22,500
		Above 10 crore and upto 20 crore	45,000
		Above 20 crore	75,000

¹ <https://nsdl.co.in/downloadables/pdf/26%20Circular%20for%20Amendment%20to%20Business%20Rules%20-.pdf>

² <https://nsdl.co.in/downloadables/pdf/26%20Circular%20for%20Amendment%20to%20Business%20Rules%20-.pdf>

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Penalty if the issuer fails to pay the fees mentioned under Annual Custodian Fees		If an Issuer fails to pay the fees mentioned under " Annual Custody Fee " by the due date, the Depository may charge interest @ 12% p.a. on the amount, from the due date of payment till the payment is received by the Depository. Provided further that the Depository may stop providing details of clients / clearing members / clearing corporation / intermediary to the Issuer and / or its Registrar and Transfer Agent as mentioned in the Bye Laws, provided further that the Depository may not permit the Issuer to use its infrastructure including for issue of further securities in electronic form.
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15. In case Unlisted public company does not obtain ISIN by 2nd October, 2018, but gives a commitment letter to its shareholders that as and when they desire for transfer their shares, the company will do the needful in the matter promptly and will take the ISIN and other related facilities within the time prescribed for transfer of securities (say within 15 days from date of receipt of request for transfer). Whether company can do so or it has to obtain ISIN on or before 2nd October, 2018?

In view of the language of sub- rule (4) read with sub- rule (1)(b) of the Amendment Rules, the Company has to facilitate dematerialization of all its existing securities by taking the following steps:

- a. Making an application to a Depository;
- b. Securing ISIN and
- c. Informing the security holders about the facility.

Since the Amendment Rules have been made applicable w.e.f 2nd Oct, 2018, the Company is under obligation to comply with the same by the said date. Therefore, giving a commitment letter to the security holders will not be in compliance of the Amendment Rules as the same is all about providing the facility of dematerialization by the said date irrespective of the fact that the security holders may come with their request at the time of transfer even after 2nd October, 2018.

16. Whether there is any penal consequence in case company does not obtain ISIN by 2nd October 2018? Rule 9A (Issuance of securities in dematerialized form by unlisted public companies) does not specify anything in this respect except issuance of securities only after payment of fee to the depositories.

Neither the section nor the Rules provide any penal consequences for non- compliance thereof. However, the same will get hit by Section 450 of the Act which is a residuary provision for penalty. The said Section prescribes a fine, which may extend to 10000 rupees for initial default and a further fine, which may extend to 1000 rupees for every day for a continuing one for the company and every officer of the company who is in default.



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17. Whether any audit report is to be submitted by the Unlisted Public Company to the Registrar of Companies? If yes, what is the time limit for submitting the same?

As per sub-rule (8) of the Amendment Rules the audit report provided under regulation 55A¹ of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public Company on a half-yearly basis to the registrar of companies within whose jurisdiction the registered office of the company is situated.

Further MCA has not provided any time limit in the Amendment Rules for submitting the same i.e. within how many days from the end of half year the report has to be submitted.

18. Is an RTA required?

Technically, not but practically yes.

19. Is audit of reconciliation u/r 55A of depositories regulations mandatory?

Yes, Half Yearly

20. What happens to the physical certificates after they are dematerialized?

After dematerialization, physical certificates may be retained / destroyed by the Issuer / RTA.

21. Can securities in odd lots be dematerialized?

Yes. Securities in odd lots can be dematerialized.

22. Do dematerialized securities have certificate number, distinctive range number or certificate numbers?

No. Dematerialized securities do not have any of the numbers mentioned above. Securities held in demat form are fungible, which means that any share of an ISIN is similar to any other share of that ISIN.

23. Can electronic holdings be converted back in physical certificate form?

Yes. It can be done through Rematerialisation, which is the process of converting electronic holdings back into physical certificates.

24. Can debt instruments, government securities and mutual fund units be dematerialized in the same demat account?

Yes. Debt instruments, mutual fund units, government securities can also be held in dematerialized form in the same demat account where equities are held.

25. If the demat request is not processed within the stipulated time, what beneficial owner can do?



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Contact your DP to look in the delay. A BO can also inform the Investor Grievances department of the Depository to look in the delay.

26. Is it compulsory to mention the ISIN of the security while filling up the DRF?

Yes. The ISIN of the security should be mentioned in the DRF, to ensure that the correct security is dematerialized. If, however, the investor does not know the ISIN, the same can be obtained from the DP or from CDSL's website, www.cdslindia.com and NSDL's website, www.nsdl.co.in

27. Whether Rule 9A of the Amendment Rules is applicable on Private Companies?

Private Companies are not covered within the ambit of Rule 9A of the Amendment Rules. However, voluntarily they can follow the Amendment Rules.

28. What is process to be followed by the Private Companies for dematerialization of shares?

The process provided in FAQ no. 10 shall be followed.

29. How is depository similar to Bank?

Bank	Depository
Holds funds in an account	Holds securities in an account
Transfers funds between accounts on the instruction of the account holder	Transfers securities between accounts on the instruction of the BO account holder
Facilitates transfer without having to handle money	Facilitates transfer of ownership without having to handle securities
Facilitates safekeeping of money	Facilitates safekeeping of securities

30. Who is an Issuer?

"Issuer" means any entity such as a corporate / state or central government organizations issuing securities which can be held by depository in electronic form.

31. Who is registered owner of Securities?

When securities of a company are held in physical form by an investor, his/ her name is recorded in the books of the company as a 'Registered Owner' of the securities. When physical shares are converted into electronic form, the depository becomes 'Registered owner' in the books of the company and investor's name is removed from books of the company.

32. Who is a Beneficial Owner (BO)?



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All the benefits of the dematerialized shares are given to the actual investor since the depository holds the securities in a fiduciary capacity on behalf of the investors who have opened a demat account with the depository. Hence, the actual investor is the “Beneficial Owner” (BO) of the securities.

33. What are the services provided by a Depository?

Following services are provided by a depository to the beneficial owners but of course, through a depository participant:

- Opening a demat account;
- Dematerialization, i.e. converting physical securities into electronic form;
- Rematerialization, i.e. converting electronic securities balances held in a BO account into physical form;
- Maintaining record of securities held by the beneficial owners in the electronic form;
- Settlement of trades by delivery or receipt of securities from / in BO accounts;
- Settlement of off-market transactions between BOs;
- Receiving electronic credit in respect of securities allotted by issuers under IPO or otherwise on behalf of demat account holders;
- Receiving non cash corporate benefits such as allotment of bonus and rights shares or any other non-cash corporate benefits given by the issuers in electronic form on behalf of its demat account holders;
- Pledging of dematerialized securities & facilitating loans against shares;
- Freezing of the demat account for debits, credits, or both

34. What are the benefits of availing depository services?

The benefits are enumerated below:-

- A safe and convenient way to hold securities;
- Immediate transfer of securities;
- No stamp duty on transfer of securities;
- Elimination of risks associated with physical certificates such as bad delivery, fake securities, delays, thefts etc.
- Reduction in paperwork involved in transfer of securities;
- Reduction in transaction cost;
- No odd lot problem, even one share can be traded;
- Nomination facility;
- Change in address recorded with DP gets registered with all companies in which investor holds securities electronically eliminating the need to correspond with each of them separately;
- Transmission of securities is done by DP eliminating correspondence with companies;
- Automatic credit into demat account of shares, arising out of bonus/split/consolidation/merger etc;
- Holding investments in equity and debt instruments in a single account.

35. In case none of Company’s director, promoter or KMP hold any shares. The Holding company is having shares in dematerialization form. Do a company, still need to do anything?

The following immediate action is to be undertaken by the Company

- Facilitate dematerialization of all its existing securities by making necessary application to depository and shall secure ISIN for each type of security and



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shall inform all its existing holders about such facility.

36. Can a demat account be opened directly with Depository?

No. A demat account cannot be opened directly with depository. It has to be opened only through a DP of depository.

37. Can a demat account be opened in the name of Joint Holders?

Yes. A demat account can be opened in a single name or in joint holders' name. There can be maximum three account holders i.e. one main holder and two joint holder

38. Can multiple accounts be opened by an investor?

Yes. An investor can open more than one account in the same name with the same DP and also with different DPs. For all the accounts, investor has to strictly comply with know your client (KYC) norms including proof of identity, proof of address requirements as stipulated by SEBI and also provide PAN number. The investor has to show the original PAN card at the time of opening of demat account.

39. Whether Rule 9A of the Amendment Rules applicable on Deemed Public Companies?

In case of a public limited company, shares are freely transferable by its members to other members of the public. This is an essential element which is required to constitute a company in which the public are substantially interested. However, in case of deemed public companies the company continues to be a private limited company in its articles but it is deemed to be a public company as it is subsidiary of a company, not being a private limited company.

Provided that even after the private company has so become a deemed public company its articles of association may include provisions relating to the matters specified in clause (68) of section 2 of the Act and the number of its members may be or may at any time be reduced, below seven. Hence considering the nature of deemed public companies; these are in our view exempted from Rule 9A of the Amendment Rule.

40. Whether Rule 9A of the Amendment Rules is applicable on Wholly Owned Subsidiaries? If yes, is there any practical difficulty for implementing the same?

Rule 9A (1) of the Amendment Rules provides that:

(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 the provisions of the Depositories Act, 1996 and regulations made thereunder.

From the above rules, it is certain that wholly owned subsidiaries ('WOS') of

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unlisted public companies shall not be excluded from the above, unless such WOS are private companies.

Further, pursuant to Amendment Rules on compulsorily dematerialization of securities we have observed that companies, which are holding 100% shares in other company i.e. its WOS, are facing difficulties. This is because pursuant to dematerialisation of shares, the shares held by nominee shareholders will have to be credited in the personal demat account of the nominee shareholder. In that case, the holding company will not have any control on the shares.

41. Can Companies hold shares jointly with the nominee Shareholder?

Yes, Companies can hold shares jointly with the nominee shareholder. However, for the purpose of joint holding in demat, both the companies and the nominee shareholder will have to jointly open a demat account. Where the employee ceases to be a nominee, the account may have to be closed or modified to have the new nominee shareholder as the first holder. The holding structure in case of joint holding is replicated in Table below:

S. No	Name of the Shareholders	Number of Shares	Holding(%)	Status of Holding Physical/Demat
1	XYZ Developers Private Limited Joint Holder: Mr.D	100	0.000	Physical
2	ABC Developers Private Limited Joint Holder: Mr.E	100	0.000	Physical
3	PQR Developers Private Limited joint Holder: Mr.F	100	0.000	Physical

42. Can the nominee shareholder hold share singly, on behalf of the company?

In case the nominee shareholder holds shares singly, on behalf of the company, the shares will have to be credited in the personal demat account of the nominee shareholder. In that case, the holding company will not have any control on the shares. Where the employee resigns and the holding company intends to have new a nominee shareholder, the transfer can be effected in the demat account of the new shareholder only where the delivery instruction slip (DIS) is signed by the transferor nominee.

Therefore, it is prudent to have the DIS signed beforehand to avoid any difficulty while effecting the transfer later.

Additionally, the depositories should also have a mechanism to mark/ lock such securities in the manner done in case of pledge, in order to disable the nominee from transferring shares without the consent of the holding company. The



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declaration furnished in Form MGT-4 and MGT-5 may also be given.

43. What are the actionable for Listed Companies as per BSE Circular No. LIST/COMP/15/2018-19 dated 5th July, 2018 and NSE Circular Ref. No NSE/CML/2018/26 dated 9th July, 2018?

All listed companies to put in place a mechanism in order to spread awareness about the proposed change and directed to carry out certain actions w.r.t. the intimation to shareholders, which primarily includes:

1. sending letters under Registered/Speed post to the holders of physical certificates;
2. sending reminders to the shareholders;
3. placing such information on the website;
4. handing over signature cards to RTA at the earliest.

44. In view of SEBI(Listing Obligations and Disclosure Requirements) Amendment Regulations, 2015 mandating transfer of securities in dematerialized form with a depository, Please clarify whether

- i. The SEBI(LODR) Amendment Regulations prohibit the investor from holding the shares in physical form

SEBI vide its press release PR No.34/2018³ dated August 10, 2018 clarified that the amendment doesn't prohibit the investor from holding the shares in physical form even after December 5, 2018.

- ii. The amendment is applicable for transmission (i.e. transfer of title of shares by way of inheritance / succession) and transposition (i.e. re arrangement / interchanging of the order of name of shareholders) cases?

The amendment is not applicable for transmission (i.e. transfer of title of shares by way of inheritance / succession) and transposition (i.e. re arrangement / interchanging of the order of name of shareholders) cases⁴

- iii. Any investor who is desirous of transferring shares (which are held in physical form) after December 5, 2018 can do so only after the shares are dematerialized?

Investors who are desirous of transferring their physical holding can transfer the shares after December 5, 2018 only after the shares are dematerialized.

³https://www.sebi.gov.in/media/press-releases/aug-2018/amendment-to-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-mandating-transfer-of-securities-in-dematerialized-form-with-a-depository_39938.html

⁴https://www.sebi.gov.in/media/press-releases/aug-2018/amendment-to-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-mandating-transfer-of-securities-in-dematerialized-form-with-a-depository_39938.html



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45. What is the obligation of the issuer company in cases where pursuant to a scheme of arrangement, the issuer company is required to issue shares to the shareholders of the demerged company but the said such shareholders have not opened their DP Account or are untraceable?

In cases where an unlisted public company is required to issue shares to the shareholders of the transferor / demerged entity, pursuant to any scheme of amalgamation / arrangement, the same is to be issued mandatorily in dematerialized form in accordance with Rule 9A of the Amendment Rules.

As per sub-rule (1) of the said Amendment Rules:

“(1) Every unlisted public company shall -

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

(b) Facilitate dematerialisation of all its existing securities

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

On reading of the aforesaid provision, it is clear that the obligation of the company is limited to issuing shares in demat form and facilitating the dematerialisation of its existing securities.

Further, the holder of securities have been bestowed with the obligation mentioned under sub-rule (3) which reads as follows:

“(3) Every holder of securities of an unlisted public company,

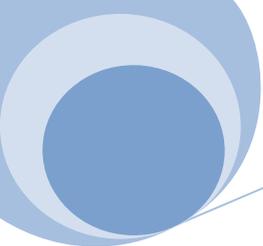
(a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

(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.”

It is evident from the aforesaid provision that the security holder is under an obligation to get their securities in demat form before any transfer or subscription.

Accordingly, in cases where the shareholders are yet to open their demat accounts and are not traceable, the issuer company may issue the shares and keep the same in a separate suspense account with any DP. Before keeping such shares in the suspense account the issuer company should send intimation letters to such shareholders at their latest know address.

Reference for such practice may be drawn from Reg 39 of the Listing Regulations



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read with the Schedule VI wherein the law requires the listed entities to open separate unclaimed suspense account for unclaimed shares (both physical and demat shares).

Accordingly, on doing so the issuer company will have no further obligation w.r.t. such shares kept in the suspense account or with whatever name called except for transferring the same to the respective shareholder's demat account on appropriate claim being made to the issuer company.

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