

FAQs on mandatory demat of securities by private companies

October 30, 2023 | Team Vinod Kothari & Company

Background

The Ministry of Corporate Affairs ('MCA') is empowered under section 29(1A) of the Companies Act, 2013 ('the Act') to prescribe such classes of companies which can hold or transfer the securities only in dematerialised form. Pursuant to such power, MCA, *vide* notification dated [September 10, 2018](#) inserted Rule 9A in the Companies (Prospectus and Allotment of Securities) Rules, 2014 ('PAS Rules'), mandating every unlisted public company to hold and issue securities only in demat form.

Recently, MCA *vide* [notification dated October 27, 2023](#) ('Present Amendment'), has extended such a requirement to private companies. The MCA has inserted Rule 9B in PAS Rules providing for mandatory dematerialisation of securities of private companies.

Our articles on the said topic can be accessed here:

1. [Diktat of demat for private companies](#)
2. [Physical to Demat: A move from opacity to transparency](#)
3. [FAQs on dematerialisation of shares](#)
4. [SEBI amends LODR mandating dematerialisation](#)

In these FAQs, we have tried to analyse the amendment and addressed the questions that may be raised by the private companies in order to dematerialise their securities.

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Applicability of Present Amendment

1. Which companies are covered by the Present Amendment?

The amendment is applicable to all private companies, excluding small companies and government companies.

2. Whether the Present Amendment is applicable to small companies?

The present amendment specifically excludes small companies. Small companies, as defined under Section 2 (85) of the Act means a company, other than a public company, having paid up share capital not exceeding Rs. 4 crores and turnover not exceeding Rs. 40 crores. However, a holding company or a subsidiary company, a company registered under section 8, a company or body corporate governed by any special Act will not be considered as a small company. Accordingly, such companies will have to comply with the mandatory demat norms.

3. Whether a Section 8 company with share capital is also covered under the Present Amendment?

Yes. Section 8 companies will get covered under the Present Amendment irrespective of the quantum of share capital.

4. Whether a Section 8 company limited by guarantee is also covered under the Present Amendment?

No. As there is no share capital in case of a Section 8 company limited by guarantee, the Present Amendment will not apply.

5. Whether a private company which is a holding/ subsidiary company of another private company is also covered under the Present Amendment?

If a private company is a subsidiary of another private company or is a holding company of another private company, then even if paid-up and turnover falls within the parameters indicated for a small company, it will not be considered as a small company and therefore, will be required to comply with the Present Amendment.

6. What if a company ceases to be a small company after 1st April, 2023?

The position is required to be analysed as on the last day of a financial year. If a company ceases to be a small company after 1st April, 2023 it will be required to comply with the provisions within 18 months from the closure of the financial year i.e. from 31st March, 2024 and be required to comply by 30th September, 2025.

7. Whether the Present Amendment is applicable to wholly owned subsidiaries?

Yes, the present amendment is applicable to wholly owned subsidiaries. The exemptions available under Rule 9A (11) are not applicable to private companies under Rule 9B.

8. Will the Present Amendment be applicable to Nidhi Companies?

The Present Amendment is applicable to private companies which are not small companies and Nidhi companies are mandatorily incorporated as public companies. Therefore, Nidhi companies are not covered under the Present Amendment. Further, Nidhi companies are exempted from the applicability in terms of Rule 9A (11) of PAS Rules.

9. Will the Present Amendment apply to a private company which is deemed to be a public company? What if the said company is a wholly owned subsidiary?

A private company which is a subsidiary of a public company is constitutionally a private company but deemed as a public company for the purpose of the provisions of the Act. Therefore, a deemed public company is already covered under Rule 9A of PAS Rules. Where such deemed public company was a wholly owned subsidiary, it was exempted from the applicability of Rule 9A. However, in view of the Present Amendment, being a private company it will be required to comply with Rule 9B. The exemption in terms of Rule 9A will cease to apply.

An analysis based on the kind of the company and holding structure has been summarised below:

Type of Company	Covered under which Rule
Private Company	Rule 9B of PAS Rules (<i>N.A. if a small company</i>)
Private company which is a WOS of another private company	Rule 9B of PAS Rules (<i>not eligible to be a small company</i>)
Subsidiary of private company	Rule 9B of PAS Rules (<i>not eligible to be a small company</i>)
Private company registered under Section 8 with share capital	Rule 9B of PAS Rules (<i>not eligible to be a small company</i>)
Public company	Rule 9A of PAS Rules
Public company which is a WOS of public company	Exempted under Rule 9A of PAS Rules
Subsidiary of public company	Rule 9A of PAS Rules
Private company which is a WOS of a public company	Exempted under Rule 9A of PAS Rules, being a deemed public company. However, one may also interpret that by virtue of being a private company, it will now get covered under Rule 9B of PAS Rules and therefore, will lose the exemption.

10. Whether the amendment is applicable only to shares or other securities as well?

The Present Amendment uses the word “securities” and therefore, it is applicable to all kinds of securities i.e., equity shares, preference shares, debentures, warrants, etc.

Actionable arising from Present Amendment

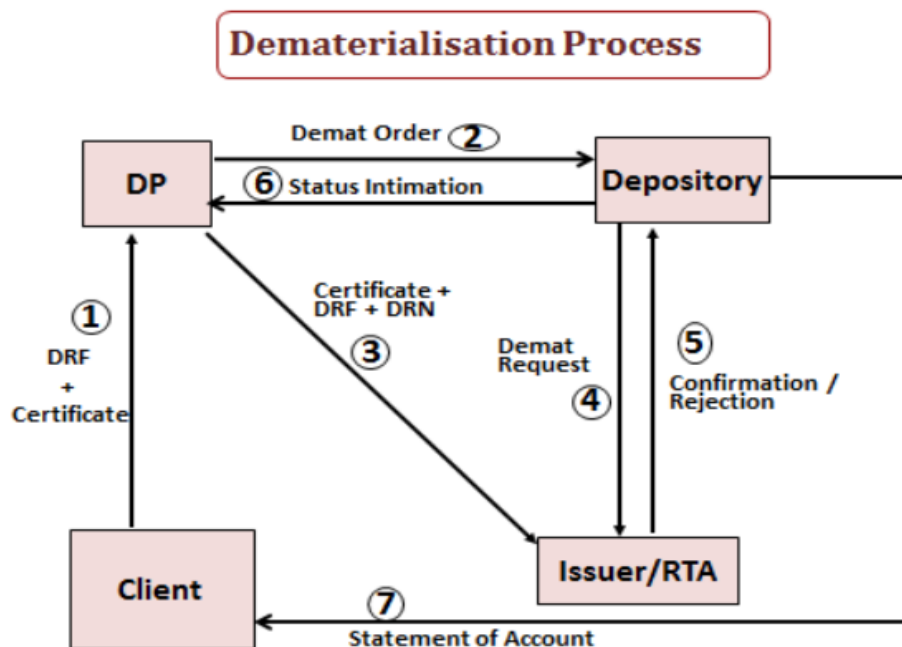
11. What are the immediate actionables arising out of the amendment?

A private company, covered under the Present Amendment will be required to –

- Obtain ISIN for all existing securities issued by the Company;
- Facilitate dematerialisation of all existing securities (as and when request is received from the holder of such securities);
- Ensure that the entire holding of its promoters, directors and KMPs are held in dematerialised form only, prior to making any offer for issuance or buyback of securities on or after September 30, 2024.
- Issue all securities in dematerialised form only;

12. What is the procedure for dematerialising the securities?

Dematerialisation is the process by which physical certificates of an investor are converted to an equivalent number of securities in electronic form and credited into the beneficial owner’s demat account. The broad process for dematerialisation is as under:



Source: [NSDL FAQs](#)

FAQs on demat have been discussed in the latter part of the document.

13. Whether the Company will be required to appoint a Registrar and Share Transfer Agent ('RTA')?

The role of RTA is to act as an intermediary between the issuer and the depository for facilitating dematerialisation and corporate actions undertaken by the issuer thereafter. It verifies the request received for dematerialisation from the depository participant and forwards to the Company. However, it is not mandatory under the Act to appoint RTA if the company has an inhouse arrangement¹. Accordingly, where an RTA is not appointed, the Company will be required to perform the said activities to enable dematerialisation of securities held by the investors.

14. Whether the private companies covered under Rule 9B will be required to maintain a register of members?

No. In terms of Section 88 (3) of the Act, the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 (22 of 1996), will be deemed to be the corresponding register and index for the purposes of the Act.

15. What will be the consequence if the company fails to comply with the provisions of the Present Amendment?

There is no specific penalty specified under Section 29 of the Act and therefore, penalty as per Section 450 of the Act will apply.

As per Section 450 of the Act, company and every officer of the company who is in default will be liable to a penalty of Rs. 10,000. In case of continuing contravention, with a further penalty of Rs. 1,000 for each day after the first during which the contravention continues, subject to a maximum of Rs. 2,50,000 in case of a company and Rs. 50,000 in case of an officer who is in default or any other person.

Issue of securities by private companies

16. Can a private company issue securities in physical form before 30th September, 2024?

Yes, private companies can issue securities in physical form before 30th September, 2024, however it shall ensure such securities are dematerialised on or before 30th September, 2024.

17. Can a private company issue securities after 30th September, 2024 if all the securities have not been dematerialised by the shareholders/ investors?

In terms of Rule 9B of PAS Rules, if the promoters, directors and key managerial personnel have dematerialised their holding, then the company is eligible to make an offer for issue of securities in dematerialised form. The subscribers will be able to apply only where the securities are intended to be held in dematerialised form.

¹ As indicated in the [ICSI Referencer on Form PAS-6](#).

Transfer of securities

18. Can a holder of securities of a private company transfer such securities in physical form before 30th September, 2024?

Yes, a holder of securities of a private company can transfer securities in physical form before 30th September, 2024. Thereafter, it can be done in dematerialised form only.

19. Can a shareholder continue to hold the shares in physical form even after 30th September, 2024?

A shareholder, unless a promoter, director or KMP, may continue to hold shares in physical form even after 30th September, 2024. However, the said shares will not be able to be transferred until dematerialised. Further, the shareholder will be able to subscribe in any further issue only after ensuring dematerialising the securities.

20. Whether dematerialisation of shares results in free transferability thereby contravening Section 2 (68) of the Act?

Section 2 (68) of the Act defines a private company and one of the features of a private company is the right to restrict the transfer of shares. In terms of Section 58 (1) of the Act, a private company has the power to refuse registration of transfer of shares. Dematerialisation of shares pursuant to Rule 9B of PAS Rules cannot be said to regard the Company non-compliant of Section 2 (68) read with Section 58.

Further, in order to ensure that the holders do not transfer the securities in dematerialised form, depositories offer an optional facility to keep the ISIN under the status '[Frozen for Debit](#)' to private companies.

Continual compliances

21. What are the other compliances to be ensured by private companies?

The private companies are required to ensure compliances applicable to unlisted public company under sub-rule (4) to (10) of Rule 9A which are summarised as under:

- a. **Rule 9A (4):** Facilitation of dematerialisation of all its existing securities by making necessary application to a depository and secure International Security Identification Number (ISIN) for each type of securities. Inform all its existing security holders about such facility
- b. **Rule 9A (5):** Ensure timely payment of fees (admission as well as annual) to the depository and Registrar to an issue and share Transfer Agent ('RTA') in accordance with the agreement. Maintain a security deposit of not less than two years fees with the depository and RTA at all times. Comply with the regulations or directions or guidelines or circulars, if any, issued by SEBI or Depository from time to time with respect to dematerialisation of shares and matters incidental or related thereto.

- c. **Rule 9A (6):** Prohibition on making any offer or buyback or issue of any bonus or right shares until the payments are made to depositories or RTA.
- d. **Rule 9A (7):** Comply with the applicable provisions of Depositories Act 1996, SEBI (Depositories and Participants) Regulations, 2018 and SEBI (Registrars to an Issue and share Transfer Agents) Regulations, 1993.
- e. **Rule 9A (8):** Filing eForm PAS-6 to the ROC within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.
- f. **Rule 9A (8A):** Immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.
- g. **Rule 9A (9) & (10):** The grievances, if any, of the security holders will be filed before the Investor Education and Protection Fund Authority (IEPFA). IEPFA will initiate any action against a depository or participant or RTA/STA after prior consultation with the SEBI.

22. What are the filing requirements?

Private companies will be required to file required Form PAS-6 to the ROC within sixty days from the conclusion of each half year. Therefore, for the half year period from April to September the due date to file Form PAS-6 will be 29th November and for the period from October to March the due date will be 30th May.

23. Will the private companies be required to file form PAS-6 for half year ending September, 2023?

The provisions of the Present Amendment are applicable after 18 months from the closure of FY 22-23 i.e., from October 01, 2024 and therefore the companies will be required to file form PAS-6 for the half year beginning from October 2024 and therefore the first PAS-6 shall be filed for half year ended March 2025.

Dematerialisation of securities

24. How will the company facilitate dematerialisation of its securities?

The Companies intending to issue or provide the securities in demat mode may register themselves on the NSDL portal, fill the necessary form along with necessary documents, verify the same and submit the physical copies of these documents. The companies may refer to the detailed process provided on [CDSL](#) & [NSDL](#) website.

25. What is an ISIN?

SEBI FAQs on Dematerialization explains ISIN (International Securities Identification Number) as a unique 12 digit alpha-numeric identification number allotted for a security (E.g.- INE383C01018). Further, all kinds of securities such as Equity-fully paid up, equity-partly paid up, equity with differential voting /dividend rights, preference shares, debentures issued by the same issuer will have different ISINs.

26. Who is required to apply for dematerialisation of securities?

The company is required to make an application to secure ISIN with a depository for each type of securities and inform all its existing security holders about such a facility.

Then, the shareholders will have to open a demat account with a Depository Participant and undertake the process of demat by submitting the Demat Request Form (DRF) along with the share certificates for dematerialization.

27. What is the process of opening a demat account?

The process of opening a demat account is similar to that of opening a Bank account. The investor will be required to select a DP² who will help to complete the formalities. Investor needs to fill up a form, submit PAN card, proof of address and bank account details. All the DPs now provide the facility of opening the account online. The applicant may open a demat account from the website of [NSDL](#) or through DPs registered with CDSL or NSDL. (Refer FAQ No. 12 of FAQs on Dematerialisation of shares)

28. Is there any stamp duty to be paid at the time of initial transaction for demat?

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. (Refer FAQ No. 13 of FAQs on Dematerialisation of shares).

29. What are the charges an investor has to pay for opening and maintenance of a Demat account?

There are no account opening charges, however various other charges like account maintenance, transaction charges, pledge creation, pledge closure, etc which are charged by DPs. A comparative of fees charged by the DPs can be accessed at [NSDLs website](#).

² List of SEBI registered Depository Participants for [CDSL](#) and [NSDL](#)