

DEMATERIALIZATION OF SECURITIES BY UNLISTED PUBLIC COMPANIES AND FILING OF RECONCILIATION OF SHARE CAPITAL AUDIT REPORT

This article is an attempt to list out the provisions/compliances of the rules notified in connection with the Dematerialization of Securities by Unlisted Public Companies.

Vide the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018, Dt: 10.09.2018, notified to be effective from **02.10.2018**, the Ministry has mandated that an Unlisted Public Company shall:

- issue of Securities in Dematerialised form only; and
- facilitate dematerialisation of all its existing Securities.

in accordance with the provisions of Depositories Act, 1996 and Regulations made there under.

It would be not out of place to mention that in respect of listed entities, SEBI had mandated that except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository. The due date before which dematerialization was to be done was initially fixed as 05.12.2018, and now the same has been extended, to be effective from **01.04.2019**.

Compliances as mandated under the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018:

- Every Unlisted Public Company:
 - a) Shall facilitate Dematerialisation of all its existing securities; and shall obtain International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility;
 - b) Making any offer for issue of any securities or buy-back of securities or issue of shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMP has been dematerialised in accordance with the provisions of Depositories Act, 1996 and regulations made there under.
 - c) Ensure timely payment of fees to the Depository, Registrar and Share Transfer Agent in accordance with the agreement executed between the parties;
 - d) Maintenance of Security Deposit at all times of not less than 2 years fees with the Depository, Registrar and Share Transfer Agent in such form as may be agreed between the parties;

- e) Ensure compliance with the regulations or directions or guidelines or circulars, if any, issued by the SEBI or Depository from time to time with respect to dematerialisation of shares of unlisted Public Companies and matters incidental or related thereto.
- f) Shall not make offer of any securities or buy-back of its securities or any bonus or rights shares till the payments to the Depositories or RTAs, are made.
- g) Ensure compliance of the provisions of the Depositories Act, 1996, the ¹Securities 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, as amended, shall apply mutatis mutandis to dematerialization of securities of Unlisted Public Companies.
- h) Shall submit Audit Report i.e., Reconciliation of Share Capital Audit Report, as required under Regulation 55A of the ²Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, read with SEBI Circular Dated: 31.12.2002, with the Registrar of Companies concerned, on a **half-yearly basis**.

➔ Every holder of Securities of an Unlisted Public Company:

- a) Who intends to transfer securities on or after 02.10.2018, shall get all such securities dematerialised before transfer;
- 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 02.10.2018, shall ensure that all his existing securities are held in Dematerialised form before such subscription

➔ The grievances, if any of the Security holders shall be filed with Investor Education and Protection Fund Authority.

➔ The Investor Education and Protection Fund Authority shall initiate any action against a Depository or RTA after prior consultation with SEBI.

Issues:

There should have been a threshold limit, as to either Share capital or Turnover or Borrowings, for making the dematerialisation applicable to such unlisted Public

¹ Now replaced with Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, Dated: 03.10.2018.

² Regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, Dated: 03.10.2018.

Companies, the lack of which is putting a Company with Share capital of 5 lakhs; and nominal turnover, and a Company with a capital of 10 Crores; and a turnover of 100 Crores at the same level.

The adherence of the provisions, and the cost of compliance, will rise, and accordingly, closely held/family held Public Companies will be those, which severally effected of the increased cost of compliance.

On a positive note, the compliance has opened-up a new window of services to the Professionals, as the Reconciliation of Share Capital Audit, can be issued by a Chartered Accountant, Company Secretary and Cost Accountant in practice.

With reference to the submission of the Reconciliation of Share Capital Audit, the same is to be prepared for the **half year ended 02.10.2018 to 31.03.2019**, and filed with the Registrar of Companies concerned, on or before **30.04.2019**.