

Demat of Securities of the Private Companies (other than Small Companies)

INDEX

SR.NO	PARTICULAR
1.	INTRODUCTION.
2.	RULE 9B PROVISIONS INTERPRETATION.
3.	ACTION/STEPS BY PRIVATE COMPANIES TO DEMAT ITS SECURITIES.
4.	COST APPLICABLE FOR DEMAT SECURITIES OF PRIVATE COMPANY.
5.	CONSEQUENCE IF THE COMPANY FAILS TO COMPLY WITH THE PROVISIONS OF RULE 9B.
6.	IMPORTANT FAQ'S

❖ INTRODUCTION:-

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, Insert Rule 9B in Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, which come into effect 28th October, 2023 i.e. date of publication in official Gazette of India.

❖ RULE 9B PROVISIONS INTERPRETATION:-

• **Rule 9B sub-rule (1) & (2):-**

This provision for Dematerialization of its Securities either preference share or equity share or debentures etc. under Rule 9B is applicable only to the Private Limited Company who does not fall under the definition of "Small Companies" as per Section 2(85) of the Companies Act, 2013 read with Rule 2(t) of Companies (Specification of definitions details) Rules, 2014 and such private company have to convert its physicals securities in to Demat form within 18 months of closure of financial year i.e on or after 31st March, 2023:-

• **Rule 9B sub-rule (3):-**

For Every Private Limited Company who does not fall under the definition of "Small Companies" Post completion of 18 months timeline the entire holding of securities of its promoters, directors, key managerial personnel shall be required to be in Demat form before any of the following corporate actions:

- a. making any offer for issue of any securities.*
- b. buyback of securities.*
- c. issue of bonus shares.*

d. right issue of securities

- **Rule 9B sub-rule (4):-**

Private Limited Company who does not fall under the definition of "Small Companies" Post completion of 18 months timeline if,

a. *Any Shareholder/Securities holder wants to transfer its securities held in physical form, then first they have to convert such physical securities into Demat form before execution of the proposed transfer.*

b. *Any existing shareholder intended to subscribe to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer shall have its existing securities in demat form before subscriptions to new securities.*

- **Rule 9B sub-rule (5):-**

Every Private Limited Company who does not fall under the definition of "Small Companies" shall facilitate dematerialisation of all its 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 inform all its existing security holders about such facility.

Further Every Private Limited Company who does not fall under the definition of "Small Companies" shall ensure that _

a) *it makes timely payment of fees (admission as well as annual) and maintains security deposit at all times, of not less than two years, fees to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;*

b) *Further 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 dematerialisation of shares of unlisted public companies and matters incidental or related thereto.*

If Company does not ensure above mentioned compliance in point no (a) and (b) shall not make offer of any securities or buyback its securities or issue any bonus or right shares until payment of fees made to depositories or registrar to an issue and share transfer agent.

*Every Private Limited Company who does not fall under the definition of "Small Companies" governed by this rule shall submit **Form PAS-6** to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.*

❖ **ACTION/STEPS BY PRIVATE COMPANIES TO DEMAT ITS SECURITIES:-**

Step no.1 :- Appointment of RTA by Issuer (Private Limited Company) and entering into a Bipartite Agreement with RTA on Rs. 600/- non-judicial stamp paper.

Step no.02:- Application to Depository for obtaining ISIN, including:

- Board Resolution to appoint **CDSL VENTURES LTD** as an RTA and appointment of Depository.
- Tripartite Agreement between RTA, Company, and Depository on Rs. 600/- non-judicial stamp paper.
- Master Creation Form on letterhead, duly digitally signed.
- CTC of Memorandum of Association (MoA) / Articles of Association (AoA).
- CTC of Certificate of Incorporation / Certificate of incorporation subsequent to name change.
- *Copy of Annual Report for the last financial year as of the financial year.
- Copy of GST Registration and PAN, TAN of the Company.
- Networth Certificate from a Practicing Chartered Accountant/ Practicing Company Secretary as of the financial year.
- Declaration of freeze/unfreeze of ISIN.
- Security details in soft and hard copy.

Step no.03:- Duly verified documents will be uploaded to the Depository by RTA for obtaining ISIN.

Step no.04:- After due verification, the depository will issue/allot ISIN.

Step no.05:- The company needs to inform its shareholders about ISIN and request them to start dematerializing their physical shares.

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.

❖ **COST APPLICABLE FOR DEMAT SECURITIES OF PRIVATE COMPANY:-**

A. Tariff for all Unlisted companies Charged By **CDSL for RTA Services** (Private Limited– only electronic connectivity)

Particulars	RTA Annual Maintenance Charges (GST 18% applicable to above charges.)
AMC Rs. 3 per folio subject to minimum of Rs. 5000/-	5,000
One time non-refundable on-boarding charges	NA up to 31 st March 2024
Total	5,000
AMC for every subsequent ISIN under same issuer id	2,000
Corporate Action	1,500

B. CDSL -Tariff for all Unlisted companies (Public and Private)

Reference Ministry of Corporate Affairs (MCA) notification dated 10th September, 2018, Issuers to pay @ `11.00 (*) per folio (ISIN position) to CDSL, subject to a minimum as mentioned below:

Nominal value of admitted securities (₹)	Annual Custodial Charges payable by an Issuer to CDSL (₹) (*)
Upto 2.5 crore	5,000
Above 2.5 crore and 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

Security Deposit:

- The unlisted public and private companies to maintain security deposit of not less than two years annual custodial fees. Issuer companies will be charged two years annual custodial fees as applicable in the first year of admission till there is a change in the capital slab. In the event of change in applicable capital slab the security deposit will be enhanced by the difference in charges (for two years).

Application Processing Fee:

- A non-refundable processing fee of Rs. 15,000/- shall be payable by Issuers companies for admission of unlisted securities.

EXAMPLE FOR COSTING:-

1. if ABC Pvt Ltd having Authorized capital of Rs. 15,00,000/- and 10 Shareholders i.e 10 Folio no.

Sr.no	Particular Services	Amount	Remark
1.	RTA Annual Maintenance Charges	Rs. 5000/-	Fixed as minimum cost irrespective of number of folio.
2.	RTA One time non-refundable on-boarding charges	Nil	if on-boarded on or before 31 st March,2024.
3.	Annual Custodial Charges payable by an Issuer to CDSL for ISIN	Rs.5000/-	Fixed as minimum cost irrespective of number of folio as Authorized capital of Company is below Rs.2.5 Crores.
4.	Maintain security deposit of not less than 2 years annual custodial fees	Rs.10,000/-	
5.	Non-refundable processing fee	Rs.15,000/-	
	Total	Rs.35,000/-	

❖ CONSEQUENCE IF THE COMPANY FAILS TO COMPLY WITH THE PROVISIONS OF RULE 9B:-

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

As per Section 450 of the Companies 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.

❖ IMPORTANT FAQ'S:-

1. Which types of Private Companies are covered under Rule 9B and mandatory to demat its securities?

- All Private Companies, **excluding** small companies and government companies.

Section 2(85) of the Companies Act, 2013 read with Rule 2(t) of Companies (Specification of definitions details) Rules, 2014:- Small Company, 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.

2. What is the time period within which Private Companies required to demat its securities?

- *Private companies have to convert its physical securities in to Demat form within 18 months of closure of financial year i.e on or after 31st March, 2023:-*
- **01st Example:-** if ABC Pvt Ltd is does not fall under definition of Small Company as on 31st March, 2023 then have to demat its securities on or before 30th September, 2024 i.e within period of *18 months of closure of financial year*.
- **02nd Example:-** if ABC Pvt Ltd is does not fall under definition of Small Company as on 31st March, 2024 then have to demat its securities on or before 30th September, 2025 i.e within period of *18 months of closure of financial year*.

3. What are the filing ROC Compliance under Rule 9B?

- 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.
- However, the provisions of the Rule 9B 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.
