



**Companies (Prospectus and Allotment of Securities) Second Amendment Rules 2023**

<b>Rules</b>	<p>The Ministry of Corporate Affairs (“MCA”) has vide Gazette Notification G.S.R. 802 (E) dated October 27, 2023 amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“Rules”).</p> <p>The amendments made vide the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (“Amended Rules”).</p>
<b>Context</b>	<p style="text-align: center;"><b><u>Following amendments have been made by the Amended Rules</u></b></p> <p>I. Rule (9) shall be numbered as sub-rule (1) thereof, and after sub-rule (1) as so numbered, the following sub-rules shall be inserted, namely:</p> <p>“(2) Every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall:</p> <p>(a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and</p> <p>(b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.</p> <p>(3) In case any bearer of share warrant does not surrender the share warrants within the period referred to in sub-rule (2), the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act.”</p> <p>II. After rule (9A) of the said rules, the following rule shall be inserted, namely:</p> <p>“(9B) Issue of securities in dematerialised form by private companies:- (1) Every private company, other than a small company, shall within the period referred to in sub-rule (2) –</p> <p>(a) issue the securities only in dematerialised form; and</p>



	<p>(b) facilitate dematerialisation of all its securities,</p> <p>in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.</p> <p>(2) A private company, which as on last day of a financial year, ending on or after March 31, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.</p> <p>(3) Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 and regulations made thereunder.</p> <p>(4) Every holder of securities of the private company referred to in sub-rule (2)-</p> <p>(a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or</p> <p>(b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.</p> <p>(5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.</p> <p>(6) The provisions of this rule shall not apply in case of a Government company.”</p>
<b>Applicability and Effective Date</b>	Applicability: Public and Private Companies Effective Date: October 27, 2023
<b>Implications/Compliance</b>	Brief overview of the key amendments: I. Share warrants issued by a public company prior to the commencement of the Companies Act, 2013, and not converted into shares.



- a) The company must inform the Registrar about the details of such share warrants in Form PAS-7 within three months of the commencement of the Amended Rules, that is, by January 26, 2024.
- b) The company must require bearers of the share warrants to surrender them for dematerialization, within six months of the commencement of the Amended Rules, that is by April 26, 2024.
- c) The company must place a notice in Form PAS-8 on its website, if any, and publish in two newspapers, English and regional, having wide circulation in the State in which the registered office of the company is situated.
- d) If any bearer of share warrants does not surrender them within the specified period, the company shall convert the share warrants into dematerialized form and transfer them to the Investor Education and Protection Fund established under section 125 of the Act.

II. Dematerialization for Private Companies:

- a) Every private company, excluding small companies\*, must:
  - i. Issue securities only in dematerialized form.
  - ii. Facilitate dematerialization of all its securities in accordance with the provisions of the Depositories Act, 1996.
- b) Such private companies as of the last day of a financial year ending on or after March 31, 2023, must comply within eighteen months of the closure of that financial year, that is, by September 30, 2024.
- c) Private companies making any offer for the issue, buyback, bonus shares, or rights offer after the compliance date must ensure that the entire holding of securities of promoters, directors, and key managerial personnel is dematerialized.
- d) Holders of securities of the private company, intending to transfer or subscribe to securities after the compliance date, must ensure dematerialization.
- e) Sub-rules (4) to (10) of rule 9A\*\* shall apply, mutatis mutandis, to the dematerialization of securities under this rule.
- f) The provisions of this rule do not apply to Government companies.

\* *small company means a company, other than a public company, —*

- (i) *paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and*
- (ii) *turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:*

*Provided that nothing in this clause shall apply to—*

- (A) *a holding company or a subsidiary company;*
- (B) *a company registered under section 8; or*
- (C) *a company or body corporate governed by any special Act;*

\*\**Inter alia includes:*

- a) *making timely payment of fees (admission as well as annual) to the depository and RTA;*



	<ul style="list-style-type: none"><li><i>b) maintaining security deposit at all times, of not less than two years fees of depository and RTA;</i></li><li><i>c) prohibition of further issue till the payments to depositories or RTA are made;</i></li><li><i>d) filing PAS-6 on half-yearly basis;</i></li><li><i>e) bring to the notice of the depositories difference observed in issued capital and the capital held in dematerialised form;</i></li><li><i>f) grievances, if any, of security holders to be filed before the IEPF Authority;</i></li><li><i>g) IEPF Authority to initiate action against a depository or participant or registrar to an issue and share transfer agent after prior consultation with SEBI.</i></li></ul>
<b>Particulars of Notification</b>	Notification G.S.R. 802 (E) dated October 27, 2023 enclosed.