

# **kcm**Guide

## **Dematerialisation in Private Companies**

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## Introduction

The conversion of physical securities into an electronic format which is maintained by the dedicated depositories authorized by the Government of India is called Dematerialization of securities. In this context, securities include any kind of shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a similar nature.

Earlier, Dematerialisation was mandated only for publicly traded companies and some large private companies and was optional for other Private Companies. However, Ministry of Corporate Affairs introduced Rule 9B of Companies (Prospectus and Allotment of Securities) Rules 2014 on October 27, 2023, which mandates Private Companies [except Small Companies] to issue the securities only in demat form and facilitate dematerialisation of securities.

Earlier, Private companies in India were relying on physical share certificates — a system vulnerable to loss, theft, and forgery. However, post introduction of Rule 9B, all private companies are now required to facilitate dematerialisation of securities and to issue shares in electronic form going forward. In relation to the said amendment, let us first understand the provisions related to it.



## Provisions of dematerialisation of shares and securities of private companies

*"Rule 9B of Companies (Prospectus and Allotment of Securities) Rules 2014 states that:*

- (1) Every private company, other than a small company<sup>1</sup>, shall
  - a. Issue the securities only in dematerialised form and
  - b. Facilitate dematerialisation of all its securitiesin accordance with the provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.*
- (2) A private company, which as on last day of a financial year, ending on or after 31st March, 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.*
- (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 (22 of 1996) and regulations made thereunder.*

<sup>1</sup> A small private company is referred to as a company with a paid-up capital of less than Rs. 4 crore and a turnover of less than Rs. 40 crores except holding or subsidiary companies, Section 8 Company or company governed by Special Act.

*(4) Every holder of securities of the private company referred to in sub-rule (2):*

- (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*
- (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.*

*(5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.*

*(6) The provisions of this rule shall not apply in case of a Government company."*

### Extension of Timelines:

MCA vide Companies (Prospectus and Allotment of Securities) Amendment Rules, 2025, extended the timelines for dematerialisation of securities from September 30, 2024 to June 30, 2025 and stated that; "A private company, other than a Producer company, which is not a small company as on March 31, 2023, may comply with the provisions of this sub-rule by June 30, 2025."

### Interpretation of the provisions

Dematerialising the shares of private companies is expected to streamline share management and enhance security for both, companies and investors. The aforesaid Rule 9B requires all Private Companies [except small companies] to issue the securities only in demat form.

In case a private company isn't considered small company based on its financial records at the end of a financial year<sup>2</sup> ending on or after March 31, 2023, it must follow these rules within 18 months after the end of that financial year i.e. up to September 30, 2024 [Revised Timeline: June 30, 2025].

Any private company as specified above, when making offers for issuing securities, buying back securities, issuing bonus shares, or offering rights after it needs to follow this rule, must ensure that all securities held by its promoters, directors, and key managerial personnel have been dematerialised as per the rules of the Depositories Act, 1996 (22 of 1996), and related regulations before making such offers.

<sup>2</sup> Financial Year- In relation to any company or body corporate, means the period ending on the 31<sup>st</sup> day of March every year, and where it has been incorporated on or after the 1<sup>st</sup> day of January of a year, the period ending on the 31<sup>st</sup> day of March of the following year, in respect whereof financial statement of the company or body corporate is made up.

### Step-by-step process for dematerialisation of shares by private companies

#### Step 1: Amendment of Articles of Association (AoA)

The Company needs to alter its Articles of Association to insert clause related to "Dematerialisation of securities". The Company will need to convene Board meeting and general meeting for alteration in AoA and also need to file e-Form MGT-14 along with e-AoA for alteration.

In case the AoA of the Company contains such clause, then there is no requirement for alteration of Articles.

#### Step 2: Appointment of Registrar and Transfer Agent (RTA)

The Company need to appoint SEBI (Securities and Exchange Board of India) registered independent Registrar and Transfer Agent (RTA). They will act as intermediaries between the company and the depositories (CDSL or NSDL).

RTA are SEBI-registered entities that provide services related to share registry maintenance and share transfer activities on behalf of companies that have issued shares to the public.

#### Step 3: Obtaining International Securities Identification Number (ISIN)

Apply for an ISIN number for each type of share your company has issued (e.g., common stock, preferred stock). This unique code identifies your company's securities globally.



It is the responsibility of the Company to obtain ISIN. The Company need to coordinate with RTA and need to submit certain documents to RTA for obtaining ISIN.

### **Step 4: Opening demat account**

Opening of demat account is the responsibility of shareholders. The shareholders of the Company need to open a Demat account with a Depository Participant (DP). DPs are usually banks or brokerage firms authorized to facilitate dematerialisation.

A Depository Participant (DP) is described as an Agent of the depository. They are the intermediaries between the depository and the investors. The relationship between the DPs and the depository is governed by an agreement made between the two under the Depositories Act.

### **Step 5: Dematerialisation of existing shares**

Facilitate the conversion of existing physical share certificates held by shareholders into electronic form through the DP. In order to dematerialise physical securities, the shareholder need to fill in a DRF (Demat Request Form) which is available with the DP and submit the same along with physical certificates that are to be dematerialised. Separate DRF has to be filled for each ISIN.

### **Step 6: Dematerialisation for promoters, directors & Key Managerial Personnel (KMP)**

The Company will need to ensure that all promoters, directors, and KMPs hold their shares in dematerialised form before issuing any new securities. They need to link their Demat accounts with the company and have their shareholdings electronically credited to them.

### **Step 7: Regular reporting (PAS 6)**

The Company will be required to submit half-yearly returns in the form of PAS 6, notifying the Ministry of Corporate Affairs about the details of shares held in physical and dematerialised form and the details of changes in share capital.

### FAQs on Dematerialization of shares

#### Q1 Are securities other than equity shares also required to be dematerialised?

Rule 9A and Rule 9B of Companies (Prospectus and Allotment of Securities) Rules 2014 uses the term "Securities" which is defined under clause 2(h) of Securities Contracts (Regulation) Act, 1956 and includes shares, scrips, stocks, bonds and debentures, debenture stocks and other marketable securities. Therefore, it is clear that securities other than equity shares are also required to be dematerialised.

#### Q2 Whether PAN is mandatory requirement to open demat account?

Yes, PAN is a mandatory requirement to open demat accounts of the shareholders in accordance with the directions issued by depositories to all DPs making PAN compulsory for all categories of demat account holders with effect from April 01, 2006 and the same is also mentioned under Point No. 1.1.1.3. of NSDL guidelines for account opening which state that *PAN is mandatory for all clients including Promoters, Partners, Karta, Trustees, whole-time directors and persons authorized to deal in securities on behalf of the Company.* The detailed guidelines can be accessed with this link: [master\\_circular\\_to\\_participants\\_march\\_2024.pdf](#)

#### Q3 Can a shareholder open more than one demat account?

Yes, a shareholder can open more than one demat account in the same name with same depository participant and also with different DPs as specified under the FAQs issued by SEBI on Dematerialisation of shares. For all the accounts, the applicant 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. The detailed FAQs can be referred vide this link: [https://www.sebi.gov.in/sebi\\_data/docfiles/20618\\_t.html](https://www.sebi.gov.in/sebi_data/docfiles/20618_t.html)

#### Q4 Whether the opening of a normal bank account is mandatory for opening of demat account?

While some of the Depository Participants are mandatorily asking for the opening of demat account, however, there are certain AD Banks who are not asking for opening of normal bank accounts for opening demat accounts.

#### Q5 A Company which is a Small Company as on March 31, 2023 ceases to be small company with effect from March 31, 2024, whether it is required to comply with the requirements of Rule 9B of Companies (Prospectus and Allotment of Securities) Rules, 2014?

Pursuant to the provisions of Sub-Rule (2) of Rule 9B of Companies (Prospectus and Allotment of Securities) Rules, 2014, a private company, which on the last day of 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 18 months of closure of such financial year, comply with the provisions of this rule.

In view of the above, the applicability needs to be checked as on the last day of the financial year. If a Company ceases to be a small company after April 01, 2023 it will be required to comply with the provisions within 18 months from the closure of financial year i.e., from March 31, 2024 and be required to comply by September 30, 2025.

### **Q6 Whether a shareholder can continue to hold shares in physical form even after June 30, 2025?**

Yes, shareholders, other than promoters, directors, key managerial personnel of the company may continue to hold shares in physical form even after June 30, 2025.

However, until the shares are in demat form, the shareholder will not be able to transfer those shares and further the shareholder will be able to subscribe to any further issue only after ensuring dematerialisation of current securities.

### **Q7 A Company which has obtained its ISIN, but the demat accounts of shareholders are not opened yet, whether that company can buy back its securities in physical form?**

As the time limit for complying with the provisions of dematerialisation has already been extended till June 30, 2025, although the demat accounts of shareholders are not yet opened, the Company can buy back its securities in physical form even after obtaining ISIN up to June 30, 2025.

### **Q8 What will be the timelines for newly incorporated companies?**

The timelines for dematerialisation in newly Incorporated companies which are holding or wholly owned subsidiary companies are not specifically prescribed, however it can be interpreted that those companies will also have the tenure of 18 months from the closure of their first financial year.

### **Q9 What will be the timeline for compliance with these Rules in case the financial year of the Company ends in December.**

In accordance with the definition of Financial Year mentioned above, generally the Financial Year of the Company starts with 1<sup>st</sup> April and ends with 31<sup>st</sup> March. However, where a company or

body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year: In view of the above, if the company's financial year is January to December then considering December 31, 2023, as the date of end of financial year, June 30, 2025 should be considered as the due date for the compliance.

### **Q10 What are the consequences and penalties for non-compliance?**

In case the company or the security holders do not comply with the requirement to dematerialize their securities by June 30, 2025, no specific penalty is mentioned, so general provisions of penalty under section 450 of Companies Act 2013 will apply:

1. Penalty of INR 10,000 plus INR 1000 for each day of continued violation, up to maximum of INR 2,00,000 for Company and every officer in default shall be liable to a penalty up to INR 50,000.
2. The Company would not be able to issue new securities in physical form with effect from July 01, 2025, and
3. The shareholders cannot transfer their existing securities to any person, unless the shareholder itself (i.e., the seller), as well as the purchaser of the securities have demat accounts with effect from July 01, 2025.

### **Q11 If different shareholders have their Demat accounts on different portals i.e. CDSL/NDL, does the company need to apply for ISIN accordingly?**

Yes, if one of the shareholders has his DP in NSDL and another shareholder has his Depository Participant in CDSL, the Company will have to obtain ISIN with both the Depositories so that the shares are credited to their Demat accounts respectively.

**Q12 Once a company obtains ISIN, what is the procedure to be followed in case of further allotment / transfer etc.?**

The Company will have to file documents with CDSL / NSDL respectively to report its corporate action, i.e. allotment of equity shares, conversion of loan into equity, conversion of preference shares into equity etc. through its RTA. Procedures in both CDSL and NSDL are different.

For CDSL – documentation is to be provided through email.

For NSDL – maker/checker concept is followed and documents are to be uploaded online on the portal.

**Q13 Can preference shares that are to be converted into equity (before the expiry of the last date for dematerialization i.e. June 30, 2025) be directly converted into equity in Demat form without applying for a separate ISIN for Preference Shares? Whether ISIN is required to obtain for redemption of preference shares?**

Yes, if the preference shares have been converted into equity, the same can be directly reported through Corporate Action Form with the relevant Depositories without applying for ISIN for Preference Shares provided the conversion into equity is done before June 30, 2025.

If the date of redemption is before June 30, 2025, then there is no requirement for obtaining ISIN. If the date of redemption is

after June 30, 2025, then it is required first to obtain ISIN and then proceed for redemption

**Q14 Whether the company needs to obtain separate ISIN for different trenches of issued Preference shares and debentures?**

Yes. In case of issue of convertible and/or redeemable preference shares and debentures, with different dates of allotment, then the Company shall get separate ISIN for each date of allotment.

**Q15 Whether the trust, being a shareholder in the company, needs to open its demat account?**

Practically, a demat account cannot be opened in the name of trust. The trustees of the trust are required to open a demat account in their joint name.

**Q16 Whether separate demat account in the name of Nominee Shareholder is required to be opened in case of WOS?**

Yes. Two different demat accounts are required to be opened. One in the name of Holding Company and another in the name of Nominee Shareholder.

**Q17 If physical shares are held by joint holders, what is the process in Demat?**

The Demat Account should also be held by both the holders. If so, shares can be credited to the Joint Demat Account.



**Q18 What is required to be done if one has physical certificates with the same combination of names, but the sequence of names is different i.e. some certificates with 'A' as first holder and 'B' as second holder and other set of certificates with 'B' as first holder and 'A' as the second holder?**

In this case the investor may open only one account with 'A' & 'B' as the account holders and lodge the security certificates with different order of names for dematerialisation in the same account. An additional form called "Transposition cum Demat" form will have to be filled in. This would help you to effect change in the order of names as well as dematerialise the securities.

**Q19 Can electronic holdings be converted back into physical certificates?**

Yes. The process is called Rematerialisation. If one wishes to get back his securities in the physical form, he has to fill in the RRF (Remat Request Form) and request his DP for Rematerialisation of the balances in his securities account. The process of Rematerialisation is outlined below:

- Make a request for Rematerialisation.
- Depository participant intimates depository regarding the request through the system.
- Depository confirms Rematerialisation request to the registrar.
- Registrar updates account and prints certificates.
- Depository updates accounts and downloads details to depository participant.
- Registrar dispatches certificates to investor.

## About **kcmGuide**

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